

SENATE—Monday, September 25, 1972

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O Lord, our Father, Almighty and Everlasting God, who hast safely brought us to the beginning of this day, defend us in the same with Thy mighty power, and grant that this day we fall into no sin, neither run into any kind of danger; but that all our doings may be ordered by Thy governance, to do always that which is righteous in Thy sight, through Jesus Christ our Lord.

O Lord God, who hast called us, Thy servants, to ventures of which we cannot see the ending, by paths as yet untried, and through perils unknown, give us faith to go to our tasks with good courage in the sure knowledge Thy hand is leading us and Thy love supporting us.

We pray in the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, September 22, 1972, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the District of Columbia Committee; the Interior and Insular Affairs Subcommittee on Parks and Recreation; and the Labor and Public Welfare Subcommittee on Education be authorized to meet during the session of the Senate today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDENT pro tempore. The nomination on the Executive Calendar will be stated.

U.S. TAX COURT

The second assistant legislative clerk read the nomination of Darrell D. Wiles, of Missouri, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

The PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed; and without objection the President will be immediately notified of the confirmation of this nomination.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to and the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Maryland (Mr. BEALL) is now recognized not to exceed 15 minutes.

(The remarks Mr. BEALL made on the introduction of S. 4023 are printed in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the senior Senator from Massachusetts (Mr. KENNEDY) is recognized for not to exceed 15 minutes.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a member of the staff of the Health Subcommittee of the Committee on Labor and Public Welfare, Dr. Larry Horowitz, be permitted on the floor during the transaction of routine morning business today.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADMINISTRATION'S OPPOSITION TO RECENT HEALTH LEGISLATION

THE NIXON HEALTH RECORD

Mr. KENNEDY. Mr. President, last week the Senate passed three landmark pieces of health legislation: The HMO bill, which provides a real alternative to traditional fee-for-service solo practice; the DES bill, which bans this known cancer-causing substance from cattle feed; and the Health Facilities, Manpower, and Community Mental Health Centers Act, which extends and improves the authorities for eight vitally important health programs.

Astonishingly, the Nixon administration has opposed each and every one of these measures. In fact, the administration has opposed each of the last 11 pieces of health legislation considered by

the Senate Subcommittee on Health. In testifying against all this legislation, the administration has effectively:

Opposed the improvement of our medical libraries;

Opposed the provision of doctors to doctorless counties;

Opposed the provision of more money for hospital construction and modernization;

Opposed the banning of a known cancer-causing substance from our food supply;

Opposed the strengthening and expansion of our community mental health centers program;

Opposed the training of allied health personnel;

Opposed the expansion of our communicable disease control programs.

This is a record of negativity unparalleled in recent times.

In 1969 President Nixon admitted that the Nation faced a massive health-care crisis which, if not met in the "next 2 or 3 years," would cause "a breakdown in our medical care system which could have consequences affecting millions of people throughout the country." The administration is willing to suffer those consequences. I am not; my Democratic colleagues are not. And even my Republican colleagues in the Senate broke with the President and joined with us to pass the three health bills last week by overwhelming majorities.

But this administration has done more than just oppose the passage of new health legislation. The President has set unprecedented records by vetoing two of the last three health appropriations bills—appropriations for all the existing health programs. Richard Nixon's latest veto message accused the Congress of fiscal irresponsibility. Yet it is the President's proposed budget which is irresponsible. His budget would not allow the maternal and child health service to provide care for one additional mother or child; would not permit one new comprehensive neighborhood health center to be opened; would continue services to only 2½ percent of the mentally retarded children in this country.

Is this really the kind of fiscal responsibility the American people want? I think not. I think the people recognize that this veto, like its predecessor, represents a desperate attempt on the part of the President to pay for the enormous costs of his tragic bombing policy in Vietnam. I do not think this Nation is prepared to pay for bombs with the dollars needed to assure the health of their children. I do not believe the Nation's children, the mentally retarded, the poor, the old and the sick ought to pay for the bombing of Vietnam. It is more than the Nation's spirit that has been drained by the continuation of this war.

We in the Senate will continue to try our best to reorder this Nation's priorities. We will continue to pass health legislation with or without administra-

tion support, and we will continue to appropriate whatever funds are necessary to solve the health care crisis. We have no alternative. No one else is looking after the health interests of the men, women, and children of America.

Mr. President, in the health field, as in so many other fields, this administration's programs favor the strong over the weak, big business and organized medicine over the individual citizen. The President's health program is little more than a windfall for the insurance industry. The President would provide a patchwork of new insurance coverages for selected groups of Americans. It is a program which totally excludes one out of five Americans. But his program ignores the necessity to increase our capacity to provide care; it ignores the urgent need to establish quality control mechanisms in our health care system; it ignores the fact that the same bankrupt institutions that cannot keep up with the payment of benefits today would have an added burden placed upon them by this program. Instead of providing an incentive for doctors to practice in rural and inner-city areas, President Nixon's program would start a gold rush of insurers into these areas.

I say the health insurance industry has been a catastrophic failure in America. I say the average citizen should not have to mortgage his future because he did not read the fine print in his insurance policy. I believe that the \$14 million insurance companies paid out in 1970 to hospitals and physicians could have been better spent; it could have been used as leverage to change the system, to develop quality standards, to provide incentives to develop new and better ways to deliver health care. Mr. President, the health of our people is far more important than the health of the insurance industry. That is why I have proposed a system of national health security: to help reorder our priorities.

I want hospitals to be primarily concerned with the patient's illness, not with the status of his insurance coverage. I want every parent in this country to know that his child can get whatever health services he needs—no father ought to ask himself if his sick child can get by without seeing a doctor because of the expense involved.

With Richard Nixon's record of support of, and faith in, the bankrupt insurance industry, it is little wonder that the Price Commission has allowed insurance company price increases of up to 55 percent.

Mr. President, when Richard Nixon took office, he asked to be judged by deeds, not words. Here are some of his deeds in the health field:

First, the first Nixon budget cut medical research by 20 percent and resulted in the closing of 19 research centers.

Second, he closed a proposed measles vaccination program in spite of predictions of a serious recurrence in 1972-73. The last epidemic of rubella resulted in more than 25,000 deaf children.

Third, he vetoed two of the last three

health appropriations bills. That veto said, in effect:

That \$8 million additional dollars was too much to spend on a program to control the diseases that account for half of all the deaths in this country—heart disease, cancer, and stroke;

That \$3 million additional dollars was too much to spend for vaccination programs in spite of their proven effectiveness;

That \$35 million additional dollars was too much to spend to control the diseases affecting the working men and women of this country—the occupational hazards like the dreaded black lung disease;

That \$46 million additional dollars was too much to spend to look after the health needs of new infants and their mothers, as well as the elderly.

Mr. President, this is a sorry record, indeed. Perhaps if all the sick in this country could band together and contribute to his campaign, Mr. Nixon would take their problems more seriously. But pregnant women, children, the elderly, the retarded, millions of middle-income working Americans, and the poor, have no Dita Beard to lobby on their behalf and they cannot expect the same favors as granted to ITT.

Dr. Stanley Yolles, a former Assistant Surgeon General and Director of the National Institute of Mental Health, a veteran of 30 years Government Service to both Republican and Democratic administrations, accused the Nixon Administration, at the time of his resignation, of a "lack of commitment to supporting mental health services for children; curtailment of research support and mental health professionals; substitution of rhetoric for monetary support in Federal drug abuse and alcohol control programs, and the introduction of partisan, political consideration in the appointment of individuals to scientific positions."

Mr. President, the American people are not deceived by Mr. Nixon's rhetoric. They will judge by what they see and experience—and what they see and experience are rising doctor bills, rising hospital bills, inadequate insurance coverage, epidemics of venereal disease, a proliferation of drug abuse, and a bankrupt administration, unable or unwilling to meet these problems. They will see all these things and then they will judge and their judgment will be that by his own standards, Mr. Nixon's health program is a dismal failure.

Mr. President, in the brief time that is remaining I would like to go over some of the statements that were made by the President in his 1971 health message to Congress, and to compare those statements with his actions in the health field.

In the health message of 1971 President Nixon said:

We must reaffirm, and expand the Federal Commitment to biomedical research.

The facts are that this administration, in its first year in office cut medical research by 20 percent, which resulted in the closing of 19 research centers.

President Nixon said:

I am announcing today a comprehensive national health insurance program to provide adequate health insurance for the American people.

The fact is, that a careful review of his health insurance proposal reveals that it excludes 1 out of every 5 Americans. If a person is married and poor but does not have children, he is excluded from the program.

President Nixon said:

We must immediately cut down on the 14,000 deaths and more than 2 million disabling injuries which result each year from occupational illnesses and accidents.

We passed legislation to permit thousands of new inspectors to be placed in the mills and factories of this country, and only 400 of them are there now. We can afford to have 150,000 men in Southeast Asia to look after the security of the South Vietnamese, but we cannot afford to put the required number of men in the plants of this country to look after the health and safety of this Nation's workers who toil in our plants and factories. In addition, the appropriations bill vetoed by the President contained \$35 million earmarked for diseases affecting workers, including the dreaded black lung disease.

President Nixon said:

When we talk about health programs we should not forget our efforts to protect the Nation's food and drug supply.

The fact is the administration just recently opposed the banning of the known cancer-causing substances, DES, from the Nation's food supply. What kind of protection is that?

The President's health message went on:

Barriers to development of HMO's include archaic state laws which prohibit or limit the group practice of medicine in 22 states.

Yet, on August 14 the administration changed its view and opposed the preemption of restrictive State laws. The department spokesman said, "Conceptually, the new policy position is a major retreat."

So in his health message he pledged to do something about restrictive health laws, but on August 14, he backed away from that commitment.

Quoting again from the 1971 health message:

The Federal Govt. should supplement these efforts by supporting out patients clinics in areas which still are underserved. These units can build on the experience of the Neighborhood Health Centers.

The fact is that the President's proposed budget would not allow one additional neighborhood health center to be opened. These facilities reach out into the rural as well as the urban areas to provide comprehensive health services. On the one hand the President said these are the kinds of facilities that should be used as models for the delivery of health care, but on the other hand his proposed budget would allow no new centers to be built in spite of the need for them in this country.

Mr. President, you find these contradictions throughout. On the one hand, there is the President's message on health, and when the time comes for appropriations to implement that message an entirely different song is sung. No one knows that better than the distinguished Senator from the great State of Washington.

Quoting again from the health message:

It is important that we produce more health professionals and that we educate more of them to perform critically needed services.

But once again the administration's actions were contradictory. The President vetoed legislation to provide more family doctors for this Nation. That was in spite of the overwhelming support of the bill in the Senate and House.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MAGNUSON. To my mind, the false sense of priorities involved—

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. CRANSTON. Mr. President, I yield 1 minute of my time to the Senator from Washington.

The PRESIDING OFFICER. The Senator from California yields 1 minute of his time to the Senator from Washington.

Mr. MAGNUSON. The priorities are misplaced. The point is that even if these figures could be disputed, I know, and the Senator from Massachusetts and the Senator from California know, we are meeting only about one-third of the real needs of the people. There is no argument when there is an overkill of defense weapons, but there is a big argument when there is an underkill on the health and education needs of the American people. That is the best way I can describe it—an overkill on one side and an underkill on the other. I would say we are not meeting at least 40 percent of the needs of the people, after listening to all the witnesses and all the testimony, in the field of health, education, and welfare.

Mr. KENNEDY. As I understand it, the President said the vetoed bill provided an additional \$2.1 billion for HEW—what was the final appropriation?

Mr. MAGNUSON. The final figure was \$30.5 billion. I will put the figures in the RECORD.

Mr. KENNEDY. The vetoed bill was \$2.1 billion over his request. Yet we are exporting over \$5 billion in military equipment a year. This was \$2.1 billion over the request.

Mr. MAGNUSON. They choked on this \$2.1 billion down there at the same time we are talking here about a bill on foreign aid which provides for more than that amount—which may be needed, too. I do not object to that, but they do not choke on the fact that—the figures are a little elusive, depending on whom one believes down there—we spend at least \$1 billion a month, not a year, but a month, chasing little people in black pajamas all over Southeast Asia. This is what I mean by priorities.

Mr. KENNEDY. I hope we will have a

chance to talk a little more about that later.

I thank the Senator from California for yielding.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the Senator from California is recognized for 14 minutes, having yielded 1 minute to the Senator from Massachusetts.

NIXON ADMINISTRATION'S FAILURE TO PROVIDE FOR VETERANS MEDICAL NEEDS

Mr. CRANSTON. Mr. President, the distinguished Senator from Massachusetts (Mr. KENNEDY) has clearly articulated the critical state of federally supported health programs—a subject he knows so thoroughly and feels so deeply. The Senator from Washington (Mr. MAGNUSON), by his comments, has brought his very great expertise and compassion to bear, also, on this most vital subject.

I rise to address the critical state of one component of the Nation's health system—the Veterans' Administration system of hospitals and clinics—and the Nixon administration's resistance to building up this system to meet the increasing pressures placed upon it by the growing numbers of veterans from previous conflicts now needing medical care, and the large numbers of veterans from the present conflict in Southeast Asia requiring intensive hospital care or rehabilitation.

When we discuss health programs and the deficiencies of the Nixon administration in meeting national needs, we must not overlook one of the major national resources in health care—the Veterans' Administration system of hospitals and clinics.

The Veterans' Administration's 167 hospitals and 202 clinics have been attempting to provide quality care to the Nation's veterans under extremely difficult conditions. These difficult conditions have been created primarily by the budgetary restrictions and personnel ceilings mandated by the administration.

The first hint of the disastrous policies which this administration would follow was dropped in 1969 when the administration recommended a reduction in the fiscal year 1970 budget request of the Johnson administration of some \$70 million. This cut would have meant a reduction of 3,600 in the number of personnel helping disabled veterans in VA hospitals.

Congress met this shortage by appropriating a substantially increased amount over the President's request, and by adopting a supplemental appropriation which brought total budget authority for medical programs up to \$1.6 billion in that year.

The next year, fiscal year 1971, following this positive action by Congress, the administration proposed a budget for VA medical care of \$1.7 billion, trumpeted as a record amount for this purpose. However, investigation by the Subcommittee on Veterans' Affairs, which I then

chaired, and a very careful scrutiny of the budget, indicated that actually, it was at best a standstill budget. And that it was indeed a regressive one.

This proposed administration figure was still \$50 million below the level estimated as necessary for fiscal year 1971, a full year previously, by the VA's own medical experts. Since the time those estimates had been put together, the demands for care and the cost of providing it had inflated beyond all expectation. Congressional action resulted in a final appropriation for fiscal year 1971 of over \$1.9 billion.

Again in fiscal year 1972, the administration's budget requests were seriously below need. The fiscal year 1972 request for the medical care item, although nominally \$124.7 million more than appropriated for the previous fiscal year, was in no way a step ahead. About half of the proposed increase would have been eaten up by inflation on fixed charges on capital items, such as utility charges. Half of the remaining \$60 million or so in the President's request would have been largely eroded by realization of a higher average salary per employee than had been budgeted.

Congress again met the issue squarely and enacted an increase of more than \$200 million, enabling the VA to provide an adequate level of care to the Nation's veterans for 1 more year.

By fiscal year 1973, as a result of congressional initiatives and over the administration's stanch protests, some \$376 million had been added over this administration's requests for medical care for veterans.

With the funds included in this year's 1973 appropriation, the amount added is now over \$450 million—almost a half billion dollars—and this effort could culminate by the end of 1973 in an increase of about 20,000 health care workers in VA medical facilities since fiscal year 1971.

Had the administration been successful in maintaining its limited recommended level of funding, this increase in personnel would have been impossible. It should be emphasized that a principal deficiency in VA hospitals had been a gross lack of staff prior to congressional efforts to increase staffing. This inadequacy had come at a time when the VA was trying to activate some 150 badly needed specialized medical services—such as intensive care units, coronary care units, open heart surgery units, pulmonary function units, and more spinal cord injury centers—all of which require intensive staffing, which drains off staff available for the core hospital.

The VA hospitals had an overall staff-to-patient ratio of less than 1.5 to 1, as compared to staffing ratios of about 2.7 to 1 for community hospitals.

This serious deficiency in staff-to-patient ratios was all the more alarming when more and more of the VA patient population included veterans of the Southeast Asia conflict.

This war in Southeast Asia, with relationship to the wounds suffered by the men serving there, is totally different from any other war we have fought. New, modern destructive devices range from high caliber rifles which inflict

shattering wounds to light caliber weapons and new types of mines and other traps used in close combat and guerrilla warfare. These new weapons are creating wounds that are unprecedented in their destructive and crippling nature.

At the same time, now, with helicopters to lift fallen men from battle the moment they have fallen, and fly them in a matter of minutes to field hospitals, these men receive medical care far earlier, after they are wounded, than in prior wars. And they receive better care, due to new medical advances and wonder drugs which were not available before.

For these reasons, more badly wounded men—10 percent more—are surviving this war than ever before in the history of any war we have fought.

These courageous men require intensive care, creating a greater demand for staff and specialized equipment.

And it was in the face of this demand and the existing low levels of staffing in 1970, 1971 and 1972 that the Nixon administration consistently fought our efforts to provide funds to live up to our obligation to our wounded and disabled veterans.

The slow but steady growth in the numbers of personnel in VA hospitals is a step ahead, but still not fully adequate in relation to the need. Nevertheless, these steps would not have been taken without the consistent support provided by the congressional leaders in the House and Senate responsible for overseeing the Veterans' Administration budget and program. I would like at this time to bring this body's attention to the outstanding leadership provided by the distinguished Senator from Rhode Island (Mr. PASTORE) in gaining increased appropriations for the Veterans' Administration each year of the last four, and in being consistently agreeable to suggestions and recommendations made for greater funding for the VA medical program. Support for the health needs of veterans has been supported in Congress by Democrats and Republicans alike. Republican Senators and Representatives have been just as unwilling as their Democratic colleagues to follow the non-leadership of President Nixon.

The growth of the VA medical care system in the last 3 years has been accomplished only by continual diligence and persistence on the part of Congress.

The administration tried to stifle Congressional funding efforts by bureaucratic controls: By issuing directives limiting the average daily census allowed in VA hospitals, and ordering a rollback in the average grades of General Schedule employees of the VA.

DAILY CENSUS CUTBACK

In 1971 OMB ordered a reduction in the average daily patient census of over 5,000 veterans. At that time, I agreed philosophically with the VA objection to the census minimum that such a requirement might run counter to sound medical judgment. Indeed I firmly believe the admission or discharge of a patient to a VA hospital is properly left to a physician's professional judgment.

But that same principle supported, indeed demanded, we set a census minimum in the law to prevent the census cutback ordered by the Office of Management and Budget.

For it was in order to save money and cut back the VA that the OMB arbitrarily required this rollback to 79,000 from a cumulative projected census of about 84,500 for fiscal year 1971.

No medical judgment was ever involved in this OMB decision.

Quite the opposite.

OMB's effort was totally contrary to medical judgment.

When, during fiscal year 1971, physicians were left to decide how best to handle admissions and discharges of sick veterans, the VA cumulative average daily census through April 1971 was running at 84,647—far above the fiscal year 1971 budget estimate of 83,000.

During that period, the VA was experiencing an almost unprecedented level of demand, as evidenced by record high monthly hospital applications and actual admissions and the highest waiting list for domestic VA hospitals in 4 years. That is why the VA fiscal year 1972 budget submission to the OMB was premised on an average daily census of 84,371, not 79,000.

And that is why a minimum census requirement, such as the Congress inserted in the appropriations act was—quite regrettably—absolutely necessary.

Otherwise, this census cutback would have been implemented by closing beds and wards.

EFFECT OF AVERAGE GS GRADE ROLLBACK

Mr. President, another OMB effort to frustrate the effectiveness of congressional initiatives was implementation of an OMB bulletin which directed the VA to achieve an average grade reduction of general-schedule employees by January 10 of a grade by June 30, 1972. This was followed by OMB Bulletin No. 72-5 directing fixed reductions in full time personnel and total employment ceilings. On the latter, the VA was, by and large, given the benefit of the doubt, but the effect of the grade rollback requirement was alarmingly eroding the quality of patient care.

The present rollback has already caused unacceptable chaos and damaged morale. It arbitrarily forced the hiring of untrained personnel at lower GS levels when trained professionals and technicians were available to hire. It caused turnover—requiring new training costs and patient care disruption for replacements—or resentment among those denied long overdue promotions. It resulted in serious depression of advancement opportunities for the lower-paid patient care personnel, especially trainees promised upgrading opportunities in good faith when hired. It led to wholesale abuse of civil service job classification standards and temporary appointments and promotions.

It widened the disparity between GS and the wage board grades—the latter not included in the OMB bulletin. It placed restrictions on filling openings at high levels for assistants and deputies. If eliminated the policy of assigning

tasks from title 38—excepted positions to GS positions. And finally, it resulted in the overall slowing down in the filling of positions while the impact on the grade level is calculated and replacements are sought at far lower GS grades with lower commensurate skills than the individual being replaced.

This is a bleak picture for the veteran patient who finds himself in the care of more and more unskilled trainees rather than experienced health care workers and who has to remain in the hospital extra days while waiting longer for X-ray and laboratory results.

Yet this was the administration's approach, and again, the only hope for the veterans was in action by the congressional appropriations committees' directing that this circular not be implemented in fiscal year 1973.

Is this administration's penny-pinching, short-sighted approach what the people of the United States want for their veterans? I say "No."

I say they want them to have the finest level of medical care possible—the level of care which the dedicated personnel of the Veterans' Administration hospitals are fully capable of giving if they are provided with the supporting personnel and the necessary equipment, medicines, and physical facilities to do so.

They have been hindered in these efforts by arbitrary and heartless decisions by this administration. Congress has tried in every way possible to insure they have the funds, equipment, medicines, and facilities necessary to provide the first-quality, compassionate care our nation's veterans deserve, and which I am sure all Americans believe they must be provided.

Congress can be counted on to continue to be vigilant to achieve this crucial goal. We must not let our high obligation to our Nation's war wounded be relegated to a low priority, as this administration has consistently sought. Instead, it must be our highest priority.

The PRESIDING OFFICER (Mr. GAMBRELL). The Senator's time has expired. Under the previous order, the Senator from Washington (Mr. MAGNUSON) is recognized for not to exceed 15 minutes.

THE LABOR-HEW APPROPRIATION VETO

Mr. MAGNUSON. Mr. President, I first want to compliment the Senator from Massachusetts and the Senator from California on their very keen analysis of the matter of priorities in this country, particularly as it relates to the HEW veto.

By any measure, the Labor-HEW bill is impressive. A \$29.6 billion dollar measure can be equally confusing and we can easily lose sight of what is really at stake.

The Labor-HEW appropriation sets forth the Federal share, or support, for hundreds of State and local health and education programs.

The Congress approved increases in the 1973 levels of funding in that vetoed bill. The Congress approved increases in those State and local health services and education programs in very specific areas.

By his veto, the President alone decreed that our Nation would not increase those services or expand the coverage and participation in those programs.

For a moment, let me set the record straight and cite a few examples of what that veto means in just the health field.

First. Approximately 150,000 fewer school-aged, handicapped children would be served and 1,500 fewer teachers of the handicapped would be trained.

Second. Approximately 30,000 crippled children would not receive medical services.

Third. Six hundred fewer physicians would be trained in the new specialty of family medicine.

Fourth. About 10,500 nursing students would be turned away when they seek scholarship aid to continue their education.

Fifth. Grants which would produce an additional 560 first-year places in medical and related schools would not be funded because the President's budget requested zero for medical school construction grants—even though there is a continuing shortage of 50,000 doctors right now.

Sixth. Grants which would produce an additional 1,650 first-year places in nursing schools would not be funded again because the President's budget requested zero for nursing school construction grants—even though the shortage of nurses may be even greater, as I have pointed out, than the shortage of doctors.

Seventh. Hospitalization costs for migrant farm workers and their families would not be funded.

Eighth. Construction of 4,000 hospital beds in eight public health centers and 46 new general hospital projects would not be funded because the President's budget requested zero for hospital construction grants.

Ninth. Construction of 2,400 beds in about 40 nursing homes and chronic disease projects would not be funded because the President's budget requested zero for long-term care construction grants.

Tenth. Modernization of 4,000 hospital beds in 55 Hill-Burton projects would not be funded because the President's budget requested zero for hospital modernization.

Eleventh. Construction of the experimental children's hospital in Washington, D.C. would be crippled by the loss of a special \$12 million experimental hospital grant because the President's budget requested zero for this important facility—which, when successfully proven, would provide a model that could be replicated throughout the Nation.

Twelfth. The initiation of a "Life Plan" in the area of kidney disease that could result in saving the lives of 10,000 to 20,000 Americans each year who now die because of the lack of life-saving kidney machines would not become a reality.

Thirteenth. Twenty-five new specialized care units for premature babies would not be established—even though this new development provides a promising way of reducing infant mortality.

Fourteenth. Additional research funds

for sudden infant death—or crib death—would not be made available to the National Institutes of Health.

There are literally hundreds of cases in which this happens, and we do not know enough about it yet to find out just how we can prevent it.

Fifteenth. Approximately 250 fewer doctors and nurses would be sent into medically underserved areas of our Nation where the existing health manpower is inadequate or nonexistent. Money was provided for the emergency Health Service Corps, but not enough.

Sixteenth. About 225,000 men, women, and children who might otherwise be helped in local community mental health centers, drug-abuse treatment centers, alcoholic treatment centers, and through the maternal and child health programs will not be able to receive such assistance.

I could go on and on and on. This is just a partial list of the health programs involved in that Labor-HEW bill that was vetoed.

These are just a few of the vital health programs, important to millions of Americans, that will not be expanded because of that veto.

An overwhelming majority in Congress determined that these programs should be expanded and these health services made available. By his veto, the President decreed otherwise.

Because of that veto, those shortages in health manpower will continue, those additional health services will not be rendered, and much additional biomedical research will not be conducted.

This is what President Nixon's veto of the original 1973 Labor-HEW Appropriations Act really means in human terms for millions of our fellow citizens.

Let us talk now about the money element. Chairman George Mahon of the House Appropriations Committee said:

I would hazard the prediction that the annual appropriation bills, for fiscal 1973 at this session, will total perhaps \$2 to \$3 billion less than the related appropriation requests.

Nine regular appropriation bills for fiscal 1973, plus the Disaster Relief appropriation bill, making 10 of the bills for 1973 have already been signed into law. At this moment, in bills signed into law, we are \$322 million above the President's budget requests.

But, the Defense Appropriation bill, which is \$4.3 billion below the budget, and foreign aid, which is some \$967 below the requests, have yet to reach final Congressional action.

Passage of these bills, at such levels below the President's requests, would leave us almost \$5 billion below his budget.

This is where priorities come in, and I do not understand anyone with any sense of priorities who could complain about an increase in health, education, and welfare, particularly in the health field, when we are going to be \$5 billion below the total budget.

As I said earlier to the Senator from Massachusetts, this false sense of priorities seems to be almost a fetish with certain people in this administration. We can spend all this money on foreign aid, and I suppose some of it should be spent. We can spend all this money on Vietnam, about a billion dollars a month, as I said before, chasing little people in black pajamas all over Southeast Asia.

Perhaps that procedure meets with the approval of many. But when we have certain capacities and capabilities in this country and when we are going to have a budget that is \$5 billion under the Presidents' request over-all, and inasmuch as Congress lowered the President's budget over the last 3½ years or 4 years some \$12 billion, I cannot see all this concern over an additional \$1.7 billion to meet the human needs of this country.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. KENNEDY. The Senator from Washington was the architect of the emergency Health Personnel Act to provide medical personnel to underserved areas. I am sure the Senator recalls that, because he was active in its development.

Does the Senator recall that in the 1971 health message the President said:

We will mobilize a new National Health Service Corps made up of largely public spirited young professionals in areas which are now plagued by critical manpower shortages.

I recall—and I wish the Senator would refresh my recollection if I am incorrect—that, first of all. The President never asked for funds for this program the first year, and then he asked for inadequate funds.

Mr. MAGNUSON. Yes.

Mr. KENNEDY. They delayed getting it started. Then they opposed legislation extending the program in testimony before the Senate Health Subcommittee. Finally, when they sent some health personnel into the field, they sent them only to communities with a sound financial base rather than to the areas which were most underserved. There is nothing in the law about communities needing to have the ability to pay for these services in order to qualify for the program.

We realize that there are about 140 counties in this country that have no physicians whatever. This legislation was intended to send needed health manpower into these underserved areas. I know that this is a program in which the Senator from Washington is particularly interested. I would like to hear his views on this.

Mr. MAGNUSON. I have a deep interest in it, because I authored the original bill, with the help of the Senator from Massachusetts and others. There are still going to be very few of these people.

It seems to me that their sense of priorities downtown was all wrong, because we intended it to go—and that is the legislative history—in those places that needed it the most and where, in some cases, they could not pay any fees or could pay just a little. That rule has been violated. There is no question about it.

They delayed the program 18 months. Now they say we are going into some places, but they cut the money again on that, and severely limited the number of doctors, nurses and others who can serve.

One can pick up a paper almost every week in any given area and find how happy the people are in certain areas—in the ghettos or in the poor rural communities that finally have a doctor show

up. The Emergency Health Service Corp. are dedicated people, and they know how to handle these problems. This increase is cut out in this bill.

This is typical of the problems we face with human need programs. The Congress, over and over again, tries to meet these needs—with sound legislation and with more adequate appropriations—especially in the health manpower field. That is the keystone of getting to the problems in the delivery of health care in our Nation.

Mr. KENNEDY. That is one of the classic examples of the President saying one thing—that he wants a vital national health service corps, and doing another—he actually vitiated the effect of the program and opposed its extension.

I recall, as the Senator from Washington does, all the publicity on the war on cancer. The Senator will remember that legislation was initially developed by the Senator from Texas. The Senate Health Subcommittee held hearings. We acted on the legislation. The administration blocked its enactment until the President put in his own program; and then we had all the publicity about that down at the White House as if Congress was never involved. Yet the vetoed HEW appropriation bill contained \$60 million additional for the war on cancer over the President's proposed budget. The vetoed bill contained \$65 million additional for the heart and lung institute over what the President wanted. Does the Senator not agree that there is an inconsistency here? The statements made at the pen-signing ceremonies are always glittering, but the behind the scenes activity is always quite different.

Mr. MAGNUSON. There seems to be no consistency between what they say and all the publicity which people seem to believe but then when the budget comes up they cut the things they are talking about. They ought to have a stereo machine with two loudspeakers, one for this side and one for the other side. That might serve their purposes better.

Over the last 4 years the President has asked for appropriations for \$95 million but Congress, sensing the true priorities, granted \$99 million. That is a \$4 billion increase in 4 years. I suppose the Pentagon spills that much money every month, do they not? They must. I am not complaining about Defense appropriations at all but I am complaining about the sense of priorities.

They say this is inflationary. It is not inflationary. It is the reverse. I never knew that educating kids became inflationary. If we do not educate them, then it will be inflationary, or if we do not give them adequate health care they need it will cost more in the long run. We had a good bill.

I deplore the fact that everyone says they are all for these things but it is Congress which has done the overwhelming amount of work to increase these funds. Many people over on the House side voted for the increases, and on the other side of the aisle in the Senate, too, but then they also voted to sustain the President's veto. That is the height of inconsistency in this very important field of human needs.

Mr. President, I ask unanimous consent to have printed in the RECORD some fact sheets with comparison on the vetoed bill and the new House bill, for the benefit of the Senate.

There being no objection, the fact sheets were ordered to be printed in the RECORD, as follows:

FACT SHEET THE VETOED BILL

Conference Total—With Comparisons

The total new budget (obligational) authority for the fiscal year 1973 recommended by the Committee of Conference, with comparisons to the fiscal year 1972 amount, the 1973 budget estimate, and the House and Senate bills follows:

New budget (obligational) authority, fiscal year 1972	\$27,403,058,000
Budget estimates of new (obligational) authority fiscal year 1973 (including \$1,449,310,000 not considered by the House)	28,776,633,500
House bill, fiscal year 1973	28,603,179,500
Senate bill, fiscal year 1973	31,354,930,500
Conference agreement	30,538,919,500
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1972	+3,135,861,500
Budget estimates of new (obligational) authority (as amended) fiscal year 1973	+1,762,286,000
House bill, fiscal year 1973	+1,935,740,000
Senate bill, fiscal year 1973	-816,011,000

THE NEW HOUSE BILL

The new House bill totals \$29,603,448,500, a decrease of \$935,471,000 from the vetoed bill, and \$835,815,000 more than the budget request. In developing a new measure to replace the vetoed bill, the House started with the original 1973 reported House bill and reduced the four largest increases over the budget contained in that bill by 12½ percent.

In addition, the new House bill includes four line items considered by the Senate, but not in the House in the original House-reported bill. These items, which are the same as the budget request, are Work Incentives, Grants for Developmentally Disabled, Special Benefits for Disabled Coal Miners and Corporation for Public Broadcasting.

The new House bill, in effect, ignored the amendments, changes and increased amounts of the Senate and all the agreements reached in conference on the original bill.

CONGRESS CUTS NIXON BUDGET REQUESTS BY \$12.7 BILLION IN 4 YEARS

Is it logical when, on the one hand, the President claims spending for Health, Education and Welfare beyond his own request is excessive, reckless and inflationary, but similar (and far greater) expenditures for Defense or Foreign Assistance apparently are not inflationary or excessive.

Since the President so obviously dominates the headlines, hardly allowing Congressional pleas to be heard, the American public conceives the President as a one-man task force trying to curb a wasteful, spendthrift Congress.

But the truth of the matter is that it is the Congress that has cut inflation by curbing presidential budget requests by \$12.7 billion from 1970 through 1973.

In four years the President has asked for \$297.1 billions for Defense, but Congress wisely curbed this spending spree to \$281.5 billion—a saving of \$15.6 billion.

For HEW, the President asked for appropriations of \$95 billion over 4 years, but

Congress (sensing the country's true priorities far better than the President) granted \$99.4 billion, an increase of \$4.4 billion over the aggregate four years' requests.

For Foreign Aid, the President asked for \$16.1 billion, but Congress granted \$13.2 billion—a saving of \$2.9 billion.

So, with a combined savings of \$18.5 billion from Defense and Foreign Aid, Congress rightly sensed urgency in HEW and used \$4.4 billion of this total savings for human resources needs. When all other departments of government were considered over the 1970-73 period, another \$1.4 billion was utilized for such areas as Agriculture and Interior, thus leaving an overall savings of \$12.7 billion in the four-year period.

The PRESIDING OFFICER (Mr. STEVENSON). Under the previous order, the distinguished Senator from Connecticut (Mr. RIBICOFF) is recognized for 15 minutes.

Mr. RIBICOFF. Mr. President, I have listened with great interest to the statements just made by the two distinguished Senators from Massachusetts and Washington, as well as the distinguished Senator from California (Mr. CRANSTON), and I cannot help agreeing with and complimenting them for their leadership in this very important field of health.

THE NIXON BAND-AID FOR HEALTH CARE

Mr. RIBICOFF. Mr. President, if, as Ralph Waldo Emerson said, "Health is our first wealth," this Nation has become poorer in the last 4 years under the administration of Richard Nixon.

The promises of the 1968 Republican platform were empty rhetoric. The Republicans blamed the Democrats in 1968 for rising health care costs. Yet in the first year alone of the Nixon administration, hospital costs increased 16 percent, doctors fees went up 9 percent, and overall medical costs went up at an annual rate of 7.2 percent—faster than all other consumer goods and services.

In 1968 Candidate Nixon pledged that no American should be denied adequate medical treatment and that all Americans should have equal access to the health care system. Yet the Nixon health insurance bill provides a lower level of services to the poor than to the nonpoor.

In his 1971 health message to Congress, President Nixon pledged that he would restructure the health care system so that it would be organized for efficiency. Yet he opposed a bill which I and 25 other Senators introduced to create a separate Department of Health. This measure, which would have streamlined the Federal health effort by bringing existing health programs under one roof and paved the way for implementation of a comprehensive health insurance system, was ignored by the Nixon administration.

In February of 1971 President Nixon said to the Nation that:

Not only is health more important than economic wealth, it is also its foundation.

Why then was the Nixon 1971 budget request for health so inadequate that the Senate Appropriations Committee was forced to report that: "For the second successive year, the Committee must ex-

press grave concern about the apparent downgrading of health as reflected by the Budget request?"

Why did President Nixon in 1970 oppose S. 2264 which authorized funds for major programs of control and vaccination for communicable diseases such as tuberculosis, tetanus, rubella, polio, venereal disease, and measles?

Why did President Nixon in December of 1970 pocket-veto S. 3418, which was designed to increase the number of family physicians?

Why was the Nixon 1972 budget request for health programs so miserly that the House Appropriations Committee called it "a step backward for research on all diseases and disabilities that afflict man" and the Senate committee called it a lackluster, pedestrian document that does not rise to the readily identifiable opportunities for pressing the fight against disease and disability.

Why did Nixon veto critical appropriations for HEW health programs for both fiscal 1970 and 1973?

The answer to all these questions is clear. The President wants to take political credit for health care legislation but he does not want to provide funds to meet America's health care needs. The administration has consistently proposed health legislation less extensive in scope than Congress has passed. Yet it continually attempts to take the credit for more comprehensive bills that pass Congress.

The 1972 GOP platform takes credit for the most comprehensive health manpower legislation ever enacted. Yet the President's budget request was far below the congressional authorization. The platform proudly boasts of its innovative experiments such as health maintenance organizations. Yet the comprehensive HMO legislation developed by the Health Subcommittee under the leadership of the distinguished Senator from Massachusetts (Mr. KENNEDY) has been bottled up in committee by administration opposition.

The Republican administration takes credit for legislation dealing with cancer, sickle-cell anemia, heart, blood vessels, lungs and kidneys, and mental retardation. Yet in each case it was due to Democratic initiative, leadership and follow-through against Republican opposition that these bills were enacted into law.

In the medicare area, the administration has quietly obstructed efforts to expand and improve the program. The Finance Committee recently approved a provision under which the costs of drugs would be assured by the medicare program instead of by the senior citizens. The administration opposed this provision.

The administration also approved of changes in the medicare program which would increase the health cost burden on the senior citizen. Under present medicare law the patient does not have to pay a coinsurance or daily hospital charge until he has been in the hospital for 60 days. H.R. 1 begins this coinsurance at the 31st day. The administration, in testimony before the Finance Committee, callously characterized this change as a step in the right direction. Throughout

consideration of H.R. 1 the administration has opposed constructive changes to the medicare and medicaid program.

Structuring the American medical system to make it responsive to the needs of consumers as well as doctors, hospitals and insurance companies is a long term project. It cannot be done overnight. But the President's haphazard and neglectful approach to meeting America's health care needs does not even begin to shape a future in which good health care can be readily available to all citizens.

Mr. President, one of the greatest needs of the American people—health care—is being neglected. I am at a loss to understand why, in the face of this record, the American public is not aware of accomplishments of the 92d Congress under Democratic leadership in spite of the failure of the President to bring forth the necessary leadership in this most important field of health.

Mr. KENNEDY. Mr. President, will the distinguished Senator from Connecticut yield?

Mr. RIBICOFF. I am pleased to yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I had an opportunity to review the National Health Service Corps legislation with the Senator from Washington. He was the original sponsor of that bill. I think that the Senate would be enormously interested in the comments of the Senator from Connecticut, especially since he has been a very distinguished Secretary of HEW in the past. When the Senator from Connecticut points out deficiencies in the administration's health policies, it carries much greater weight than when other Senators point them out.

I can remember—and I would be interested in the reaction and response of the Senator from Connecticut on this matter—when the Carnegie Commission report on the plight of the Nation's medical schools came out. It showed that some of our most outstanding medical schools were working under tremendous economic burdens. Johns Hopkins, one of the oldest and finest medical schools in the country, had been forced to expend capital from its endowment, and was perilously close to having to close down.

The Carnegie Commission made important recommendations. And eventually we provided good legislation. The legislation was funded. The Congress provided funds above what the President requested. And then we found out this year there were 22 medical schools getting less money than they were under the old formula.

It seems to me that once again we have the President and the administration making statements and comments about how they are advancing new ideas with respect to helping out the medical schools, and putting their tag on various pieces of legislation and getting credit for that legislation, but not meeting the problems at all. The medical schools are experiencing a serious financial crisis; and the Nation has a serious shortage of health manpower. There are thousands of young people who would like to go to

medical schools in this country but who cannot gain admission because of a lack of positions. And yet we import thousands of graduates from medical schools of other countries. The administration has not begun to solve this crisis.

I wonder if this kind of situation is not distressing to the Senator from Connecticut and does the Senator not wonder how we can ever begin to meet our health crisis when we have this serious manpower shortage and an underfunding of health manpower programs?

Mr. RIBICOFF. Mr. President, it is not only distressing. It is a question of what to do to meet the critical health care needs of 16 million people. Every segment of American society has these needs—rich and poor, black and white, northern and southern.

The Senator from Massachusetts has been the leader of this fight in the Congress and in the country. In reviewing the Senator's accomplishments, I consider it ironic that the administration has opposed the last 11 pieces of health legislation considered by the Senator's Health Subcommittee.

If I may go over and catalog some of these with the Senator: Is it not true that the administration opposed the Senator's proposal for improving the medical libraries?

Mr. KENNEDY. The Senator is correct. One of the great medical libraries here is the Lister Hill Medical Library. They have a marvelous program for expanding medical libraries all over the country to keep them up to date with the advances in biomedical research. But the administration opposed this legislation.

Mr. RIBICOFF. Did not the administration oppose the proposal of the Senator to provide doctors to doctorless counties?

Mr. KENNEDY. The Senator is correct. When that legislation passed 3 years ago, the President never requested the funding for it. Then there was inadequate funding. Then, when they finally started to send the doctors out, they sent them to the richer counties rather than to the poorer counties and violated very clearly the mandate of the legislation.

Mr. RIBICOFF. And did they not also oppose the provision for appropriating more money for hospital construction?

Mr. KENNEDY. The Senator is correct. The President's budget contained not 1 cent for new medical school construction.

Mr. RIBICOFF. And the administration also opposed the ban on cancer causing substances in the food supply.

Mr. KENNEDY. The Senator is again correct. I am glad that the Senate has taken action on this matter. However, we had absolutely no kind of support from the administration in the banning of DES.

Mr. RIBICOFF. What happened to the Senator's proposal to strengthen and expand community health mental centers in this Nation?

Mr. KENNEDY. The administration was opposed to it in spite of the fact that there is an urgent need for an expansion of this program.

Mr. RIBICOFF. Mr. President, what about the program to expand the communicable diseases programs which are so important to every child and adult in this country?

Mr. KENNEDY. The administration again opposed that program and ignored the warnings of a rubella outbreak for 1972 and 1973. The last epidemic resulted in deafness in 25,000 children in this country. And the funds we are talking about are a mere \$3 million above the President's requests.

The PRESIDING OFFICER (Mr. STEVENSON). The time of the Senator has expired.

Mr. ROBERT C. BYRD. Mr. President, may I be recognized under the previous order for not to exceed 15 minutes?

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield the Senator 5 minutes.

Mr. RIBICOFF. Mr. President, I thank the distinguished assistant majority leader.

Mr. President, I ask the Senator from Massachusetts if it is not true that the President's proposed budget would not permit the opening up of new neighborhood health centers.

Mr. KENNEDY. The Senator is correct. And that is despite the extraordinary success of that program. When you travel to our cities, and even to some rural areas, you see these centers and you are amazed at how effective they are. They are doing the job. They are one of the major developments we have seen in the whole field of improving health care delivery. The President's budget would not allow one new comprehensive health center to be opened.

Mr. RIBICOFF. Is it not true that the President's proposed budget would not allow maternal child health care service to provide care for one additional child or mother?

Mr. KENNEDY. The Senator is correct, and that is despite the fact that the need will increase this year, and despite the fact that the effectiveness of the program is universally accepted.

Mr. RIBICOFF. Mr. President, I close with asking the distinguished Senator a philosophical question. Why is it that the country seems unaware of these facts and this sorry record?

Mr. KENNEDY. That is an important question. The reasons are complex. There has been a great deal of hoopla about the position of the administration, a great deal has been made of the President's 1971 health message. And I am sure the Senator is familiar with it. We read the President's health message and there is hardly a line in it with which we would disagree. However, when we look beyond the health message to its implementation, we see that very little has been accomplished. Unfortunately, this administration has been extremely successful in misleading and duping people into believing that the health message of the President was going to be implemented and was going to meet the health needs of this country. But as the Senator from

Washington (Mr. MAGNUSON) pointed out, in the long and unpublicized appropriations hearings the administration made it clear that they would not follow through. Unfortunately the full record is not understood and comprehended by the American people. But they will see that the health care crisis continues. In 1968, 55 percent of all interns in this country came from foreign countries, only 75 percent of the slots were filled and more than half were filled by foreign graduates. What does that say about the President's health manpower programs?

Do we not have young, qualified Americans who want to be doctors in this Nation? Why do we have to be taking thousands of foreign-trained residents? They should be back in their countries, in the third world, and other places.

Why can we not have a program to train young Americans who have the ability and the humanitarian concern to be good doctors? I do not think most Americans realize that 55 percent of those being trained as house staff are foreigners.

Mr. RIBICOFF. What compounds the tragedy is that this is depriving nation after nation of its needed medical personnel, where health conditions are often abysmal. So we deprive not only our Nation of its health needs but also the world of the attention it must have to have a healthy and decent life.

Mr. KENNEDY. The Senator is correct. We have the facilities, but we do not have the programs. I think this is a real tragedy. We do have the young people who are committed and we have the expertise to develop the program. The schools want to provide the slots for these Americans but we do not have the commitment to do so. It is important that the American people understand the situation which exists.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ROBERT C. BYRD. Mr. President, does either Senator wish additional time?

Mr. RIBICOFF. I wish to make just one more comment.

Mr. ROBERT C. BYRD. I yield 5 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. RIBICOFF. It becomes very obvious that there is a tremendous gap between words and deeds. It is so easy to send a position paper or a message to Congress and to have the American people assume that those words are actions. But under the Nixon administration, unfortunately, we find year after year that that rhetoric is never transformed into action. It is the job of the President to be teacher, leader, and advocate before the entire Nation; President Nixon has failed in this task. I would hope that even in the face of this discouragement to the American people because of the lack of leadership from the White House that the distinguished Senator from Massachusetts will continue persistently in his crusade for better health for the American people. I am positive in the long run it is efforts of men like the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON),

and those of us who help in this fight that will assure that the health needs of this country are met. Anyway, it is unfortunate that the leadership for improving health needs does not come from the White House, which is where it should come from. But, since it has been forfeited, it is up to us to continue the fight because the fight must go on.

Mr. KENNEDY. I thank the Senator from Connecticut for his comments and for his statement this morning.

Before we finish I would like to quote the President once again. He said:

Nations, like men, are judged in the end by things they hold most valuable.

I agree with that. The tragic indictment of Richard Nixon is that the health care crisis has a low priority in his administration.

Mr. RIBICOFF. I thank the distinguished assistant majority leader for granting us additional time.

Mr. ROBERT C. BYRD. Does the Senator from Massachusetts wish additional time?

Mr. KENNEDY. No.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that the remaining time allotted to me be vacated, and that the time allotted to the distinguished Republican leader (Mr. SCOTT) be vacated.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks that Mr. ROTH made at this point when he introduced S. 4024, to amend the Internal Revenue Act, are printed in the RECORD in the Routine Morning Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER. Is there further morning business?

ORDER FOR RECOGNITION OF SENATOR SCOTT TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the orders for the recognition of Senators on tomorrow, previously entered into, the distinguished Republican leader (Mr. SCOTT) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Subsequently, this order was modified to provide for the Senate to recess until 9 a.m. tomorrow.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is concluded.

FOREIGN ASSISTANCE ACT OF 1972—UNFINISHED BUSINESS LAID ASIDE

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate H.R. 16029, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 16029) to amend the Foreign Assistance Act of 1961, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the unfinished business (S. 3970), to establish a Council of Consumer Advisers in the Executive Office of the President, and for other purposes, will be temporarily laid aside and remain in a laid-aside status until a time to be determined by the majority leader or his designee.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a renewal of the period for the transaction of routine morning business for not to exceed 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DETERIORATING POSTAL SERVICE

Mr. MATHIAS. Mr. President, I received a letter on September 14 of this year from the Greater Baltimore Chamber of Commerce inviting me to attend a luncheon meeting to hear the Secretary of Commerce, the Honorable Peter G. Peterson. The letter was mailed in Baltimore, the Nation's seventh largest city, on September 1. Thirty-five miles and 13 days later, the letter arrived in my office. I searched my mail and found that my experience was not unusual. Constituent complaints about the mail abound 1 year after the Postal Service initiated service standards to "assure service to the American people."

One constituent, a businessman in Cecil County, wrote:

I am attaching two items which indicate a postal cancellation date of September 7 and 9, yet both were received by us this morning, September 15. Both items reached the post office in Rising Sun this morning, so the delay had to be between the point of mailing and Rising Sun.

We have been watching the mail carefully each day and it is quite clear to us that we receive entirely too many letters which from four to nine days, whether carrying regular postage or air mail postage.

A Baltimore businessman complained that the Postal Service is costing him money in two ways, by, one, charging higher rates and, two, through slow service which drives his customers away. He said:

It is not often that we plague our elected officials with business problems, but in this particular case I am sure our problem is reflected in thousands of instances in Maryland and elsewhere.

This complaint has to do with abominable mail service and is particularly detrimental to tax paying businesses like ours.

We use "postage will be paid" cards as a means of encouraging customers to buy, a matter of making things easy for them to send orders in.

Customers everywhere want good service, no matter what type of business, and we get reprimanded, as well as ignored, because many customers say we do not give good service and they buy elsewhere. They have a hard time believing that it takes five to ten days for a letter or postcard to travel twenty-five hundred miles from Baltimore.

A Baltimore rabbi wrote to complain that it takes 4 to 5 days for mail to reach Baltimore from New York. He called attention to a special delivery letter the Postal Service took 14 days to deliver and a copy of a telegram mailed in downtown Baltimore which was not delivered to him in northwest Baltimore until 3 days later.

The U.S. Postal Service was created to modernize and improve mail service in this Nation. Clearly, it has not met its congressional mandate.

The mail seems to be slower in arriving than at any time in my memory. I want to know why. Why has the very instrument Congress created to expedite the mail clogged it? Why does it take 13 days for a letter to travel 35 miles and 14 days for a special delivery letter to get from New York to Baltimore? Why must businessmen pay higher postal rates and receive increasingly poorer service?

These questions must be answered. I am today referring these cases to the chairman of the Post Office and Civil Service Committee and asking the Postmaster General to meet with me at the earliest possible date so I can examine the practices and procedures employed by the U.S. Postal Service.

It seems to me that the Postal Service has had sufficient time to shake the bugs out of new programs. Perhaps the programs are so full of bugs that we need to throw them out and start over again. I am prepared to take all necessary steps to see that mail is delivered within a reasonable time.

The public expects Congress to take every possible action to correct its child which has gone astray. If it takes an investigation then we must order one; if legislation is needed we must pass it and if one step is not enough we should pledge to take both.

Public frustration with the mail is all too apparent. As one constituent asked:

If it only took six days to create the universe, why does it take 14 for a letter to get from Baltimore to Washington.

The somewhat wry question deserves an answer.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for the transaction of routine morning business be extended an additional 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 1141 through 1144, consecutively.

The PRESIDING OFFICER. Without objection, it is so ordered.

PEAR MARKETING ORDERS

The bill (H.R. 14015) to amend section 8c(2), section 8c(6), section 8c(7)(C), and section 8c(19) of the Agricultural Marketing Agreement Act of 1937, as amended was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-1194), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXPLANATION

H.R. 14015 would amend the marketing order law to authorize marketing orders for pears for canning or freezing. At present, orders cannot be made applicable to fruits or vegetables for canning or freezing, except in the case of olives, grapefruit, cherries, cranberries, certain apples, and asparagus. The bill also permits market promotion for the canned or frozen product under an order applicable to any commodity for canning or freezing; and makes it clear that paid advertising could be provided for pears for canning or freezing and the product thereof.

The bill would require a favorable vote of two-thirds of the growers voting or two-thirds of the volume of pears represented by the vote in each State of the production area. The bill would also require that processors and producers have equal representation on any agency selected to administer the marketing order.

With one minor exception this bill is identical to S. 1241 introduced on March 6, 1971. Hearings were held on S. 1241 and H.R. 14015 on September 17, 1972.

NEED FOR LEGISLATION

Under present law there are six commodities for canning or freezing that are eligible for marketing order programs, as noted above. The committee feels that producers of pears for canning or freezing should also be given the opportunity to establish a marketing order program.

The other changes proposed by this bill would give producers of pears and other commodities better marketing tools to sell high quality produce to the consuming public.

COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the committee reports it is in agreement with the cost estimates submitted by the Department of Agriculture. Annual costs to the Department for administering a marketing order established under this legislation would approximate \$25,000 for each of the next 5 years, according to the Department.

RELEASE OF CERTAIN LAND TO THE STATE OF OREGON

The bill (H.R. 4634) to direct the Secretary of the Army to release on behalf of the United States a condition in a deed conveying certain land to the State of Oregon to be used as a public highway was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-1196), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of this bill is to authorize and direct the Secretary of the Army to release on behalf of the United States certain land-use restrictions with respect to a proposed right-of-way of approximately 60 by 340 to 400 feet, constituting a portion of a 233.91-acre parcel of land in Clackamas County, Oreg., heretofore conveyed by the United States to the State of Oregon for military purposes pursuant to the act of August 1, 1956 (70 Stat. 793), so that the State may convey this right-of-way to Clackamas County for use as a public highway. This bill as it passed the House of Representatives contained the technical amendments recommended by the Secretary of the Army in his letter of June 16, 1971, which is set forth later in this report.

BACKGROUND OF THE BILL

The proposed release involves the lands of Camp Withycombe, formerly the Clackamas National Guard target range, located in Clackamas County, 9 miles southeast of Portland, Oreg. This facility, comprising 233.91 acres of land with improvements, was conveyed to the State of Oregon by deed executed by the Secretary of the Army, dated November 9, 1956, pursuant to the act of August 1, 1956 (70 Stat. 793). Both the act

and the deed made the conveyance subject to certain reservations, restrictions and conditions, to wit: (1) reserved to the United States all minerals, oil, and gas with rights-of-entry; (2) the property is to be used only for military purposes, and if not so used, title thereto shall revert to the United States with all improvements and without compensation; and (3) in event of national emergency or declaration of war, the Secretary of Defense may reoccupy and use the property without payment. Camp Withycombe has, since its establishment, been used for National Guard purposes and currently is utilized by the Oregon National Guard for military academy operations in small unit tactics, a firing range, and storage depot.

FISCAL DATA

Enactment of this legislation will not involve the expenditure of any Federal funds.

PROPERTY CONVEYED TO COLUMBIA MILITARY ACADEMY

The bill (H.R. 16251) to release, the conditions in a deed with respect to certain property heretofore conveyed by the United States to the Columbia Military Academy and its successors was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-1197), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to release the provisions and conditions contained in the deed of conveyance from the Assistant Secretary of War dated May 10, 1904, to the Columbia Military Academy and its successors of record in book 105, page 495, register's office, Maury County, Tenn., and to vest fee simple title to the property, free of such provisions and conditions in the Columbia Military Academy.

EXPLANATION OF THE BILL

The property involved comprises approximately 67 acres of land near Columbia in Maury County, Tenn., acquired by the United States in 1888 for the establishment of the Columbia Arsenal. The purchase price of \$15,250 was paid by citizens of Maury County. In 1901 the arsenal was abandoned.

The act of April 23, 1904 (33 Stat. 296) authorized and directed the Secretary of War to convey the Columbia Arsenal property to "Columbia Military Academy, an educational corporation organized under the laws of the State of Tennessee, and its successors," with the proviso that the estate shall continue so long as the property shall be used for educational purposes only and in conformity with other terms of the act including the following:

- (a) The Secretary of War shall have visitation privileges and the right to prescribe the military curriculum of the school; upon failure of the school to comply with rules and regulations prescribed by the Secretary or other terms of the act, the Secretary is authorized to declare the estate has determined and the property shall revert to the United States, in which event the Secretary of War is authorized to take possession of the property on behalf of the United States.
- (b) The United States shall have the right to use the property for military purposes at any time upon demand by the President of the United States.

The above-mentioned deed of conveyance

to Columbia Military Academy, issued pursuant to this act and described in the bill, contained these provisions and terms.

Since the establishment of Columbia Military Academy in 1905 the school has maintained the original buildings on the property, and has invested well over \$1 million in additional buildings, such as classroom buildings, gymnasiums, and dormitories. Presently, improvements to some of the structures are urgently needed. Due to the fact that the property is not owned by the school under the terms of the original conveyance, no collateral can be offered on loans to improve the facilities.

The Department of the Army has no requirement for use of the former Columbia Arsenal property. To the contrary, authority has existed since 1928 for the extinguishment of all rights therein reserved to the United States. By the act of May 26, 1928 (45 Stat. 766), the Secretary of War was authorized to sell to the Columbia Military Academy all rights reserved to the United States in the deed of May 10, 1904, and the act of April 23, 1904, for a consideration not less than the appraised value of the land alone.

This statute was repealed by the act of July 3, 1930 (46 Stat. 1009) which substantially restated the 1928 act, and reduced the purchase price to a sum of \$10,000. Due to the school's financial difficulties, a sale was never consummated. However, the authority to sell still exists.

FISCAL DATA

Enactment of this bill will not entail any expenditure by the Federal Government.

U.S. CONSENT TO THE ARKANSAS RIVER BASIN COMPACT, ARKANSAS-OKLAHOMA

The Senate proceeded to consider the bill (S. 3316) to grant the consent of the United States to the Arkansas River Basin compact, Arkansas-Oklahoma, which had been reported from the Committee on the Judiciary with amendments on page 2, line 8, after the word "two", to strike out "State" and insert "States"; and on page 6, line 18, after the word "other", strike out "State" and insert "State: *Provided, however, That nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.*"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the Arkansas River Basin compact, Arkansas-Oklahoma, 1970, as ratified by the States of Arkansas and Oklahoma as follows:

"ARTICLE I

"(a) The major purposes of this Compact are:
"A. To promote interstate comity between the States of Arkansas and Oklahoma;

"B. To provide for an equitable apportionment of the waters of the Arkansas River between the States of Arkansas and Oklahoma and to promote the orderly development thereof;

"C. To provide an agency for administering the water apportionment agreed to herein;

"D. To encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin; and

"E. To facilitate the cooperation of the water administration agencies of the States of Arkansas and Oklahoma in the total development and management of the water resources of the Arkansas River Basin.

"ARTICLE II

"As used in this Compact:

"A. The term 'State' means either State signatory hereto and shall be construed to include any person or persons, entity or agency of either State who, by reason of official responsibility or by designation of the Governor of that State, is acting as an official representative of that State.

"B. The term 'Arkansas-Oklahoma Arkansas River Compact Commission,' or the term 'Commission' means the agency created by this Compact for the administration thereof.

"C. The term 'Arkansas River Basin' means all of the drainage basin of the Arkansas River and its tributaries from a point immediately below the confluence of the Grand-Neosho River with the Arkansas River near Muskogee, Oklahoma, to a point immediately below the confluence of Lee Creek with the Arkansas River near Van Buren, Arkansas, together with the drainage basin of Spavinaw Creek in Arkansas, but excluding that portion of the drainage basin of the Canadian River above Eufaula Dam.

"D. The term 'Spavinaw Creek sub-basin' means the drainage area of Spavinaw Creek in the State of Arkansas.

"E. The term 'Illinois River Sub-basin' means the drainage area of Illinois River in the State of Arkansas.

"F. The term 'Lee Creek Sub-basin' means the drainage area of Lee Creek in the State of Arkansas and the State of Oklahoma.

"G. The term 'Poteau River Sub-basin' means the drainage area of Poteau River in the State of Arkansas.

"H. The term 'Arkansas River Sub-basin' means all areas of the Arkansas River Basin except the four sub-basins described above.

"I. The term 'water-year' means a twelve-month period beginning on October 1, and ending September 30.

"J. The term 'annual yield' means the computed annual gross runoff from any specified sub-basin which would have passed any certain point on a stream and would have originated within any specified area under natural conditions, without any man-made depletion or accretion during the water year.

"K. The term 'pollution' means contamination or other alterations of the physical, chemical, biological or radiological properties of water or the discharge of any liquid, to result in a nuisance, or which renders or is likely to render the waters into which it is discharged harmful, detrimental or injurious to public health, safety, or welfare, or which is harmful, detrimental or injurious to beneficial uses of the water.

"ARTICLE III

"A. The physical and other conditions peculiar to the Arkansas River Basin constitute the basis of this Compact, and neither of the States hereby, nor the Congress of the United States by its consent hereto, concedes that this Compact established any general principle with respect to any other interstate stream.

"B. By this Compact, neither State signatory hereto is relinquishing any interest or right it may have with respect to any waters flowing between them which do not originate in the Arkansas River Basin as defined by this Compact.

"ARTICLE IV

"The States of Arkansas and Oklahoma hereby agree upon the following apportionment of the waters of the Arkansas River Basin:

"A. The State of Arkansas shall have the right to develop and use the waters of the Spavinaw Creek Sub-basin subject to the limitation that the annual yield shall not be depleted by more than fifty percent (50%).

"B. The State of Arkansas shall have the right to develop and use the waters of the Illinois River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"C. The State of Arkansas shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Arkansas, or the equivalent thereof.

"D. The State of Oklahoma shall have the right to develop and use all waters originating within the Lee Creek Sub-basin in the State of Oklahoma, or the equivalent thereof.

"E. The State of Arkansas shall have the right to develop and use the waters of the Poteau River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"F. The State of Oklahoma shall have the right to develop and use the waters of the Arkansas River Sub-basin subject to the limitation that the annual yield shall not be depleted by more than sixty percent (60%).

"ARTICLE V

"A. On or before December 31 of each year, following the effective date of this Compact, the Commission shall determine the stateline yields of the Arkansas River Basin for the previous water year.

"B. Any repletion of annual yield in excess of that allowed by the provisions of this Compact shall, subject to the control of the Commission, be delivered to the downstream State, and said delivery shall consist of not less than sixty percent (60%) of the current runoff of the basin.

"C. Methods for determining the annual yield of each of the sub-basins shall be those developed and approved by the Commission.

"ARTICLE VI

"A. Each State may construct, own and operate for its needs water storage reservoirs in the other State: *Provided, however*, That nothing contained in this Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.

"B. Depletion in annual yield of any sub-basin of the Arkansas River Basin caused by the operation of any water storage reservoir either heretofore or hereafter constructed by the United States or any of its agencies, instrumentalities or wards, or by a State, political sub-division thereof, or any person or persons shall be charged against the State in which the yield therefrom is utilized.

"C. Each State shall have the free and unrestricted right to utilize the natural channel of any stream within the Arkansas River Basin for conveyance through the other State of waters released from any water storage reservoir for an intended downstream point of diversion or use without loss of ownership of such waters: *Provided, however*, That a reduction shall be made in the amount of water which can be withdrawn at point of removal, equal to the transmission losses.

"ARTICLE VII

"The States of Arkansas and Oklahoma mutually agree to:

"A. The principle of individual State effort to abate manmade pollution within each State's respective borders, and the continuing support of both States in an active pollution abatement program;

"B. The cooperation of the appropriate State agencies in the States of Arkansas and Oklahoma to investigate and abate sources of alleged interstate pollution within the Arkansas River Basin;

"C. Enter into joint programs for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate significance;

"D. The principle that neither State may

require the other to provide water for the purpose of water quality control as a substitute for adequate waste treatment;

"E. Utilize the provisions of all Federal and State water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems effecting the waters of the Arkansas River Basin.

"ARTICLE VIII

"A. There is hereby created an interstate administrative agency to be known as the 'Arkansas-Oklahoma Arkansas River Compact Commission.' The Commission shall be composed of three Commissioners representing the State of Arkansas and three Commissioners representing the State of Oklahoma, selected as provided below; and, if designated by the President or an authorized Federal agency, one Commissioner representing the United States. The President, or the Federal agency authorized to make such appointments, is hereby requested to designate a Commissioner and an alternate requesting the United States. The Federal Commissioner, if one be designated, shall be the Chairman and presiding officer of the Commission, but shall not have the right to vote in any of the deliberations of the Commission.

"B. One Arkansas Commissioner shall be the Director of the Arkansas Soil and Water Conservation Commission, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside in the Arkansas River drainage area in the State of Arkansas and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

"C. One Oklahoma Commissioner shall be the Director of the Oklahoma Water Resources Board, or such other agency as may be hereafter responsible for administering water law in the State. The other two Commissioners shall reside within the Arkansas River drainage area in the State of Oklahoma and shall be appointed by the Governor, by and with the advice and consent of the Senate, to four-year staggered terms, with the first two Commissioners being appointed simultaneously to terms of two (2) and four (4) years, respectively.

"D. A majority of the Commissioners of each State and the Commissioner or his alternate representing the United States, if they are so designated, must be present to constitute a quorum. In taking any Commission action, each signatory State shall have a single vote representing the majority opinion of the Commissioners of that State.

"E. In the case of a tie vote on any of the Commission's determinations, order, or other actions, a majority of the Commissioners of either State may, upon written request to the Chairman, submit the question to arbitration. Arbitration shall not be compulsory, but on the event of arbitration, there shall be three arbitrators:

"(1) One named by resolution duly adopted by the Arkansas Soil and Water Conservation Commission, or such other State agency as may be hereafter responsible for administering water law in the State of Arkansas; and

"(2) One named by resolution duly adopted by the Oklahoma Water Resources Board, or such other State agency as may be hereafter responsible for administering water law in the State of Oklahoma; and

"(3) The third chosen by the two arbitrators who are selected as provided above. If the arbitrators fail to select a third within sixty (60) days following their selection, then he shall be chosen by the Chairman of the Commission.

"F. The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact shall be borne equally by the two States and shall be paid by the Commission out of the 'Arkansas-Oklahoma Arkansas River Compact Fund,' initiated and maintained as provided in Article IX(B)(5) below. The States hereby mutually agree to appropriate sums sufficient to cover its share of the expenses incurred in the administration of this Compact, to be paid into said fund. Disbursements shall be made from said fund in such manner as may be authorized by the Commission. Such funds shall not be subject to the audit and accounting procedures of the States; however, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified independent public accountant at regular intervals, and the report of such audit shall be included in and become a part of the annual report of the Commission, provided by Article IX(B)(6) below. The Commission shall not pledge the credit of either State and shall not incur any obligations prior to the availability of funds adequate to meet the same.

"ARTICLE IX

"A. The Commission shall have the power to:

"(1) Employ such engineering, legal, clerical and other personnel as in its judgment may be necessary for the performance of its functions under this Compact;

"(2) Enter into contracts with appropriate State or Federal agencies for the collection, correlation, and presentation of factual data, for the maintenance of records and for the preparation of reports;

"(3) Establish and maintain an office for the conduct of its affairs;

"(4) Adopt and procure a seal for its official use;

"(5) Adopt rules and regulations governing its operations. The procedures employed for the administration of this Compact shall not be subject to any Administrative Procedures Act of either State, but shall be subject to the provisions hereof and to the rules and regulations of the Commission; *Provided, however,* All rules and regulations of the Commission shall be filed with the Secretary of State of the signatory States.

"(6) Cooperate with Federal and State agencies and political subdivisions of the signatory States in developing principles, consistent with the provisions of this Compact and with Federal and State policy, for the storage and release of water from reservoirs, both existing and future within the Arkansas River Basin, for the purpose of assuring their operation in the best interests of the States and the United States;

"(7) Hold hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact, which orders shall be enforceable upon the request by the Commission or any other interested party in any court of competent jurisdiction within the county wherein the subject matter to which the order relates is in existence, subject to the right of review through the appellate courts of the State of situs. Any hearing held for the promulgation and issuance of orders shall be in the county and State of the subject matter of said hearing;

"(8) Make and file official certified copies of any of its findings, recommendations or reports with such officers or agencies of either State, or the United States as may have any interest in or jurisdiction over the subject matter. Findings of fact made by the Commission shall be admissible in evidence and shall constitute prima facie evidence of such

fact in any court or before any agency of competent jurisdiction. The making of findings, recommendations, or reports by the Commission shall not be a condition precedent to instituting or maintaining any action or proceeding of any kind by a signatory State in any court, or before any tribunal agency or officer, for the protection of any right under this Compact or for the enforcement of any of its provisions;

"(9) Secure from the head of any department or agency of the Federal or State government such information, suggestions, estimates and statistics as it may need or believe to be useful for carrying out its functions and as may be available to or procurable by the department or agency to which the request is addressed;

"(10) Print or otherwise reproduce and distribute all of its proceedings and reports; and

"(11) Accept, for the purposes of this Compact, any and all private donations and gifts and Federal grants of money.

"B. The Commission shall:

"(1) Cause to be established, maintained and operated such stream, reservoir or other gaging stations as may be necessary for the proper administration of this Compact;

"(2) Collect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact;

"(3) Continue research for developing methods of determining total basin yields;

"(4) Perform all other functions required of it by the Compact and do all things necessary, proper or convenient in the performance of its duties thereunder;

"(5) Establish and maintain the 'Arkansas-Oklahoma Arkansas River Compact Fund,' consisting of any and all funds received by the Commission under the authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds of the signatory States;

"(6) Prepare and submit an annual report to the Governor of each signatory State and to the President of the United States covering the activities of the Commission for the preceding fiscal year, together with an accounting of all funds received and expended by it in the conduct of its work;

"(7) Prepare and submit to the Governor of each of the States of Arkansas and Oklahoma an annual budget covering the anticipated expenses of the Commission for the following fiscal year; and

"(8) Make available to the Governor or any State agency of either State or to any authorized representative of the United States, upon request, any information within its possession.

"ARTICLE X

"A. The provisions hereof shall remain in full force and effect until changed or amended by unanimous action of the States acting through their Commissioners and until such changes are ratified by the legislatures of the respective States and consented to by the Congress of the United States in the same manner as this Compact is required to be ratified to become effective.

"B. This Compact may be terminated at any time by the appropriate action of the legislature of both signatory States.

"C. In the event of amendment or termination of the Compact, all rights established under the Compact shall continue unimpaired.

"ARTICLE XI

"Nothing in this Compact shall be deemed:

"A. To impair or affect the powers, rights or obligations of the United States, or those claiming under its authority in, over, and to the waters of the Arkansas River Basin;

"B. To interfere with or impair the right or power of either signatory State to regulate within its boundaries of appropriation,

use and control of waters within that State not inconsistent with its obligations under this Compact.

"ARTICLE XII

"If any part or application of this Compact should be declared invalid by a court of competent jurisdiction, all other provisions and application of this Compact shall remain in full force and effect.

"ARTICLE XIII

"A. This Compact shall become binding and obligatory when it shall have been ratified by the legislature of each State and consented to by the Congress of the United States, and when the Congressional Act consenting to this Compact includes the consent of Congress to name and join the United States as a party in any litigation in the United States Supreme Court, if the United States is an indispensable party, and if the litigation arises out of this Compact or its application, and if a signatory State is a party thereto.

"B. The States of Arkansas and Oklahoma mutually agree and consent to be sued in the United States District Court under the provisions of Public Law 87-830 as enacted October 15, 1962, or as may be thereafter amended.

"C. Notice of ratification by the legislature of each State shall be given by the Governor of that State to the Governor of the other State, and to the President of the United States, and the President is hereby requested to give notice to the Governor of each State of consent by the Congress of the United States.

"IN WITNESS WHEREOF, the authorized representatives have executed three counterparts hereof such of which shall be and constitute an original, one of which shall be deposited with the Administrator of General Services of the United States, and one of which shall be forwarded to the Governor of each State.

"Done at the City of Little Rock, State of Arkansas, this 16th day of March, A.D., 1970.

"FOR ARKANSAS: S. KEITH JACKSON, Committee Member; JOHN LUCE, Committee Member.

"FOR OKLAHOMA: GLADE R. KIRKPATRICK, Committee Member; S. KEITH JACKSON, Committee Member.

"Approved: TRIGG TWICHELL, Representative, United States of America.

"Attest: WILLARD B. MILLS, Secretary."

SEC. 2. In order to carry out the purposes of this Act, and the purposes of article XII of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a party litigant in any litigation in the United States Supreme Court, if the United States of America is an indispensable party to such litigation, and if the litigation arises out of this compact, or its application, and if a signatory State to this compact is a party litigant in the litigation.

SEC. 3. The right to alter, amend, or repeal this Act, is expressly reserved.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-1198), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the consent of the United States to

the Arkansas River Basin compact, Arkansas-Oklahoma.

STATEMENT

In a letter to the Committee on the Judiciary, the Honorable John L. McClellan, who introduced the bill for himself, Mr. Bellmon, Mr. Fulbright, and Mr. Harris, said:

The Senate Committee on the Judiciary has before it S. 3316, a bill to grant the consent of the United States to the Arkansas River Basin compact, signed on behalf of the States of Arkansas and Oklahoma on March 16, 1970.

S. 3316 is of vital importance to the citizens of Arkansas and Oklahoma. The ratification of the pact between the States marks another stage in our efforts to enhance the development of the Arkansas River Basin and to protect the total environment of the entire region. The compact not only provides for the equitable apportionment of the waters of the Arkansas River between Arkansas and Oklahoma, but also encourages the maintenance of active antipollution controls to further reduce natural and man-made pollution in the Arkansas River Basin.

Under these circumstances, I am certain that you will agree that prompt and favorable action should be taken by the committee on this important legislation.

In a favorable report on the bill, the Department of Justice, in a letter to the committee dated September 19, 1972, said:

This is in response to your request for the views of the Department of Justice on S. 3316, a bill to grant the consent of the United States to the Arkansas River Basin compact, Arkansas-Oklahoma.

Congress, by the act of August 11, 1955, 69 Stat. 184, granted its consent to the States of Arkansas and Oklahoma to negotiate and enter into a compact to protect from pollution, and to apportion equitably, the waters of the Arkansas River flowing between those two States, and directed the participation in these negotiations of a representative of the United States. Pursuant to this act, on March 16, 1970, the compact was executed by the State representatives and approved by the representative of the United States.

The State of Arkansas ratified this compact draft through its Act No. 16, 1971, approved January 26, 1971.

The State of Oklahoma ratified the interstate compact draft through H.B. No. 1326, approved April 24, 1971. This ratification, however, carried the following amendment:

"SECTION 2. AMENDMENT-RATIFICATION"

"This ratification is subject to the State of Oklahoma and the State of Arkansas, acting through their duly authorized compact representatives, amending said 'Arkansas River Basin compact' in the particulars as set forth hereinafter, and further, the ratification of said amendment of said compact by the Legislature of the State of Arkansas. Said amendment being expressed as follows:

"The following language shall be added to Article VI, Section A of said compact, to-wit: 'Provided however, That nothing contained in this compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State.'"

The Arkansas River Compact Committee unanimously approved the Oklahoma amendment as an appropriate clarification statement in the compact. The Federal member of the committee was formally advised that the Federal agencies had no objections to this amendment.

The State of Arkansas adopted the State of Oklahoma's amendment to the Arkansas River compact draft through Act No. 40, approved February 17, 1972.

Section 1 of the bill would grant the consent of the Congress to the compact set

forth therein. The compact provides for co-operation between the States in abatement of water pollution within the Arkansas River Basin and makes apportionments between the States of the waters of the Arkansas River Basin by specified subbasins. The compact creates a permanent commission composed of commissioners representing each State and requests the President of the United States to designate a commissioner and an alternate representing the United States. It provides that the Federal commissioner, if one is designated, shall be the presiding officer, without vote, of the commission. In further regard to the United States the compact disclaims any impairment or effect upon the powers, rights, or obligations of the United States, or those claiming under its authority, in, over, and to the waters of the Arkansas River Basin.

Section 2 of S. 3316 provides:

"Sec. 2. In order to carry out the purposes of this Act, and the purposes of article XII of this compact consented to by Congress by this Act, the congressional consent to this compact includes and expressly gives the consent of Congress to have the United States of America named and joined as a party litigant in any litigation in the United States Supreme Court, if the United States of America is an indispensable party to such litigation, and if the litigation arises out of this compact, or its application, and if a signatory State to this compact is a party litigant, in the litigation."

Article XII of the compact referred to in section 2 makes the inclusion of such provision in the congressional consent act a condition precedent to the compact's becoming operative.

The consent of the United States to be sued as set forth in this bill is similar to the consent to suit contained in section 107(b) of the River and Harbor Act of 1966, 80 Stat. 1405, 1415, consenting to the Arkansas River Basin Compact between Kansas and Oklahoma, and to the consent to suit contained in section 2 of the Act consenting to the Kansas-Nebraska Big Blue River Compact (P.L. 92-308, June 2, 1972).

The purpose of this provision is to insure the compact's enforceability between the States by preventing the dismissal of an original action between the States on the jurisdictional ground of the indispensability of the United States. Accordingly, the waiver of sovereign immunity from suit of the United States is limited to suits in the Supreme Court of the United States arising out of the compact with a signatory State as a party litigant and the United States an indispensable party. Under these circumstances the Department of Justice has no objection to this provision.

The Department of Justice has no objection to the enactment of S. 3316, subject to amendment of article VI, section A of the compact set out therein (p. 6, 1, 17-18) to reflect the amendment made by the States in ratification of the compact. As amended that section reads:

"A. Each State may construct, own and operate for its needs water storage reservoirs in the other State, provided, however, that nothing contained in the Compact or its ratification by Arkansas or Oklahoma shall be interpreted as granting either State or the parties hereto the right or power of eminent domain in any manner whatsoever outside the borders of its own State."

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

The Committee on the Judiciary in recommending approval of the compact is of the view that the compact does not affect any obligations owed Indian tribes by the United States, nor does it impair the legal rights of Indian tribes or individual Indians residing within the Arkansas River Basin.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT ON GRANTS VESTING TITLE TO CERTAIN EQUIPMENT

A letter from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on grants vesting title to certain equipment, for fiscal year 1972 (with an accompanying report); to the Committee on Aeronautical and Space Sciences.

PROPOSED FLOOD DISASTER PROTECTION ACT OF 1972

A letter from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation to expand the national flood insurance program by substantially increasing limits of coverage and total amount of insurance authorized to be outstanding and by requiring known flood-prone communities to participate in the program, and for other purposes (with accompanying papers); to the Committee on Banking, Housing and Urban Affairs.

REPORT ON COMMISSARY ACTIVITIES OUTSIDE THE CONTINENTAL UNITED STATES

A letter from the Acting Assistant Secretary for Administration, Department of Commerce, transmitting, pursuant to law, a report on the Department of Commerce on commissary activities outside the continental United States, during the fiscal year 1972 (with an accompanying report); to the Committee on Commerce.

REPORTS ON SHARING OF MEDICAL FACILITIES AND FOR EXCHANGE OF MEDICAL INFORMATION

A letter from the Administrator of Veterans Affairs, transmitting, pursuant to law, reports on Sharing of Medical Facilities and Exchange of Medical Information, for the fiscal year 1972 (with accompanying reports); to the Committee on Veterans' Affairs.

FALL TERM OF SUPREME COURT

A letter from the Chief Justice, Supreme Court of the United States, informing the Senate that the Court will open the October, 1972 term on October 2, 1972; ordered to lie on the table.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A resolution adopted by the board of selectmen, town of Brookline, Mass., relating to the death of 11 athletes at the 20th Olympiad; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, without amendment:

S. Con. Res. 97. Concurrent resolution in behalf of prisoners of war and missing in action (Rept. No. 92-1216).

By Mr. STEVENS, from the Committee on Commerce, with an amendment:

S. 3358. A bill to prohibit the use of certain small vessels in United States fisheries (Rept. No. 92-1217).

By Mr. HUGHES, from the Committee on Armed Services, without amendment:

S. 2738. A bill to amend titles 10 and 37, United States Code, to provide for equality of treatment for military personnel in the application of dependency criteria (Rept. No. 92-1218).

By Mr. ROBERT C. BYRD (for Mr. BENT-

SEN), from the Committee on Armed Services, with amendments:

H.R. 3817. An act to amend titles 10, 32, and 37, United States Code, to authorize the establishment of a National Guard for the Virgin Islands (Rept. No. 92-1223).

By Mr. McCLELLAN, from the Committee on Government Operations, without amendment:

H.R. 12807. An act to amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government (Rept. No. 92-1219).

By Mr. BROCK, from the Committee on Government Operations, with amendments:

H.R. 9676. A bill to authorize the conveyance of certain lands of the United States to the State of Tennessee for the use of the University of Tennessee (Rept. No. 92-1220).

By Mr. HRUSKA, from the Committee on the Judiciary, without amendment:

H. Con. Res. 701. A concurrent resolution commending the 1972 United States Olympic team for their athletic performance and Mark Andrew Spitz, in particular, for his unparalleled achievement in the 1972 Olympic games in Munich, Germany (Rept. No. 92-1225); and

H.J. Res. 1304. A joint resolution authorizing the President to proclaim October 1, 1972, as "National Heritage Day" (Rept. No. 92-1226).

By Mr. LONG, from the Committee on Finance, with an amendment:

H.R. 640. An act to amend the Tariff Schedules of the United States to permit the importation of upholstery regulators, upholsterer's regulating needles, and upholsterer's pins free of duty (Rept. No. 92-1222).

By Mr. LONG, from the Committee on Finance, with amendments:

H.R. 9463. A bill to prohibit the importation into the United States of pre-Columbian monumental and architectural sculpture, murals, and any fragment or part thereof, exported contrary to the laws of country of origin, and for other purposes (Rept. No. 92-1221).

By Mr. LONG, from the Committee on Finance, with additional amendments:

S. 3598. A bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans (Rept. No. 92-1224) (Together with minority and additional views.)

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. ROBERT C. BYRD (for Mr. WILLIAMS), from the Committee on Labor and Public Welfare:

Colston A. Lewis, of Virginia, to be a member of the Equal Employment Opportunity Commission;

Christopher M. Mould, of the District of Columbia, to be an associate director of ACTION; and

Kay McMurray, of Illinois, to be a member of the National Mediation Board.

By Mr. COOK, from the Committee on the Judiciary:

Thomas R. Holsclaw, of Kentucky, to be a member of the Board of Parole.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated.

By Mr. BEALL (for himself, Mr. CASE, Mr. DOMINICK, Mr. EAGLETON, Mr. GOLDWATER, Mr. GRAVEL, Mr. HATFIELD, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. RANDOLPH, Mr. SCOTT, and Mr. SCHWEIKER):

S. 4023. A bill to direct the Secretary of Transportation to make a comprehensive study of a high-speed ground transportation system between Washington, D.C., and Annapolis, Md., and a high-speed marine vessel transportation system between the Baltimore-Annapolis area in Maryland and the Yorktown-Williamsburg-Norfolk area in Virginia, and to authorize the construction of such systems if such study demonstrates their feasibility. Referred to the Committee on Commerce.

By Mr. ROTH (for himself and Mr. BOGGS):

S. 4024. A bill to amend the Internal Revenue Code of 1954 to disregard children's benefits received by an individual under the Social Security Act in determining whether that individual is a dependent of a taxpayer. Referred to the Committee on Finance.

By Mr. INOUE:

S. 4025. A bill to designate the Federal office building to be constructed in Honolulu, Hawaii, as the Prince Jonah Kūhio Kalanianaʻole Federal Building. Referred to the Committee on Public Works.

By Mr. CRANSTON (for himself, Mr. HRUSKA, Mr. TUNNEY, and Mr. SCOTT):

S.J. Res. 269. A joint resolution authorizing the procurement of an oil portrait and marble bust of former Chief Justice Earl Warren. Referred to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BEALL (for himself, Mr. CASE, Mr. DOMINICK, Mr. EAGLETON, Mr. GOLDWATER, Mr. GRAVEL, Mr. HATFIELD, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. RANDOLPH, Mr. SCOTT, and Mr. SCHWEIKER):

S. 4023. A bill to direct the Secretary of Transportation to make a comprehensive study of a high-speed ground transportation system between Washington, D.C., and Annapolis, Md., and a high-speed marine vessel transportation system between the Baltimore-Annapolis area in Maryland and the Yorktown-Williamsburg-Norfolk area in Virginia, and to authorize the construction of such systems if such study demonstrates their feasibility. Referred to the Committee on Commerce.

Mr. BEALL. Mr. President, for myself and 14 other Members of the Senate, I introduce the Bicentennial Advanced Technology Transportation System Demonstration Act. The Senators cosponsoring this measure with me are Mr. CASE, Mr. DOMINICK, Mr. EAGLETON, Mr. GOLDWATER, Mr. GRAVEL, Mr. HATFIELD, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. RANDOLPH, Mr. SCHWEIKER, and Mr. SCOTT.

This bill authorizes the Secretary of Transportation to undertake a feasibility study of a combined and coordinated land and water transportation system consisting of a tracked air cushion vehicle (TACV), or other high-speed ground transportation system, operating between Washington, D.C., and Annapolis,

Md., and a surface effect ship, or other high-speed marine transportation system, operating between the Baltimore, Annapolis area in Maryland and the Yorktown-Williamsburg-Norfolk area in Virginia. This demonstration project in the Nation's Capital area will provide the highest visibility for the type of advanced intermodal transportation systems available to move large numbers of people at high speeds.

At the same time it will link these most historically significant areas of our country at the time of the bicentennial celebration. Since time is of the essence if this innovative transportation system is to be operational for the bicentennial observances, the bill also authorizes the construction of the system if the study demonstrates its feasibility, and if the Secretary recommends the establishment of all or part of the system. The study, which is to be completed no later than 9 months after the bill's enactment, will determine the feasibility, social advisability, environmental impact, and economic practicability of the vehicles.

During this investigation study, the Secretary is expected to consult with the appropriate State and local governments. Since Maryland would be heavily involved and has already expressed its interest and support for this project, Maryland certainly should be consulted each step along the way in its development. I hasten to point out that although construction is authorized if the study proves the project's feasibility, Congress would still have the final say through the appropriations process.

The Washington area this summer on a number of occasions has suffered under a blanket of pollution resulting in a number of "emergency alerts" for the area. Each occasion, the pollution was pushed away to the great relief of the area's residents. In addition, traffic congestion continues to plague our citizens as they inch their way to and from work. Both these pollution incidents and the daily highway congestion drive home the need to accelerate our search for alternative and better ways of moving citizens, particularly in metropolitan areas.

In 4 years the Nation will celebrate its 200th birthday. During this bicentennial celebration the Washington area will play host to millions of Americans and foreign visitors who will come to the Capital City.

The bicentennial events and the transportation needs of the Nation combine to give us a unique opportunity to create a transportation showplace that will provide the many visitors to the Capital area with an exciting means of seeing the historical cities and sights of the region, as well as the opportunity to provide a practical demonstration of a technologically advanced transportation system which will attract national and international attention and recognition and demonstrate to the world that the United States will continue its leadership in the world of tomorrow.

The principal focus of the high-speed ground transportation system study between the Nation's Capital and Maryland's charming capital of Annapolis will be the tracked air cushioned vehicle—

TACV—although the Secretary is authorized to examine the feasibility of other surface transportation systems as he deems desirable.

The TACV is an electrically powered, high-speed vehicle capable of speeds 150 miles per hour or more and has a passenger capacity of 60 or more. The TACV vehicle has two power or propulsion systems. The first forces air downward against a fixed track and is a levitation device which allows the vehicle to float a fraction of an inch above the guideway. This enables the vehicle to have a cushioned, virtually vibration-free operation. The second power system provides the forward thrust. The TACV vehicle can operate on a fixed track on a guideway which can be located at ground level; raised as with a viaduct or pylons; or below ground.

The Department of Transportation and the other transportation agencies around the world are placing great emphasis on the development of the TACV as the ground vehicle of the future. The French developed the initial technology and have one 70 seat vehicle in operation on a 13-mile viaduct test track near Orleans. A number of American firms are developing prototypes and the United States is presently constructing a TACV test site in Pueblo, Colo.

The technology for the TACV is considered to be at hand and only engineering application problems need to be solved. It is generally agreed, however, that if TACV is to be a viable alternative in a comprehensive urban transportation system, demonstration projects must be carried out. What better place to carry out the project than in the Nation's Capitol area? What better time to do the project than during the Nation's observation of its 200th birthday? By such a demonstration the American public and our foreign visitors will see and we will test the desirable characteristics of the TACV vehicle, such as ride quality, noise level, and safe high-speed operation.

In addition, data such as the performance, reliance, safety, construction, ability, and environmental impact of the vehicle will be provided by a practical demonstration. As previously indicated, the TACV will operate between Washington, D.C., and Annapolis, Md. The vehicle could begin in the city or perhaps at a Metro subway station such as at the new town of Fort Lincoln, or Ardmore, or New Carrollton, a growing transportation center, and then speed down the median strip of Route 50 to Annapolis.

I ask unanimous consent that a recent article on New Carrollton be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. GAMBRELL). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BEALL. Mr. President, these examples I cited are not meant to specify the stops or the route for the feasibility study, for this will be the function of the study. It does represent some of the suggestions of individuals and the AFL-CIO Maritime Committee which has de-

voted considerable time and attention to this endeavor.

The second part of this proposal calls for a feasibility study of a surface effect ship or other high-speed marine vessel operating between the Baltimore-Annapolis area in Maryland and the Yorktown-Williamsburg-Norfolk area in Virginia.

Mr. President, when we examine many of the Nation's largest cities, we find that many areas are located on harbors or major waterways. This really is not too surprising when we consider that during the period when many of America's cities were evolving, water transportation was the predominate mode of transportation.

As a matter of fact, 60 percent of the population of the country live adjacent to water and nine out of the 15 largest cities are coastal. Many transportation experts feel our waterways have the potential for helping to solve our transportation problems and that they could play a major role in easing the traffic problems of the commuter. If such were the case, it may be possible to use free waterways rather than build more expensive freeways.

They are also many experts who believe that we are on the threshold of revolutionary developments in marine transportation, both for cargo and passenger purposes. In addition, these developments are of the utmost interest to military.

The second part of the feasibility study will concentrate on the surface effect vessel, hydrofoils, and other high-speed marine transportation. The surface effect ship includes hovercraft and sidewall craft which employ cushions of air to produce lift. The hydrofoils depend on dynamic fuel lift and are either surface or fully emerged.

There is a growing interest in this area both in the United States and throughout the world. I will discuss a number of vessels under development as well as some that have been in operation to date. This is not an exhaustive examination but merely attempts to convey to my colleagues a feeling for present developments and activity.

First, military experts foresee these developments resulting in a new family of oceangoing vessels operating at speeds of 100 knots or more. This compares with the speed of 40 knots of a modern destroyer. The military has already tested air cushion vehicles in Vietnam and elsewhere. I ask unanimous consent that articles dealing with this military interest be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BEALL. Mr. President, turning now to domestic developments, both the Bell Aerospace Corp. and the Airjet General Corp. have developed prototype vessels. These experimental vessels are capable of speeds of 80 knots.

Bell has constructed the *Voyageur* vessel, a high-speed multipurpose air cushion vessel. Two of these vessels have been constructed and are currently completing engineering and certification tests on Lake Ontario, near Toronto.

The *Voyageur* has a basic flat bed which permits addition of superstructure and equipment to meet various needs, including the addition of a passenger cabin which would give the vessel a capability of carrying 144 passengers.

Boeing has also developed a most interesting and attractive marine vessel called the jetfoil, an advanced hydrofoil which the company's literature heralds as a "new dimension in transportation." The jetfoil would be a cruise speed of 45 knots and a capacity of 250 commuter passengers or 190 passengers with luggage. Boeing says its jetfoil is safe, comfortable, and a "good neighbor" since noise and pollution levels are well below the strict pollution levels set for 1975 cars. The company's literature even assures that the jetfoil "leaves no wake to destruct the shorelines or small boats."

The British Rails Hovercraft Co., Seaspeed, has been operating 30 minute regular runs to the Isle of Wight and across the English Channel using giant car ferry types. The latter has become profitable. Other vessels are being used on oil and seismic surveys.

The British Corp. is now producing a craft which in basic form will accommodate 170 passengers and 34 cars. Variations on this model will be capable of handling 256 passengers and 30 cars or a straight commuter type vessel carrying 605 passengers.

Mr. President, the trip from Annapolis down the Chesapeake Bay will surely be an unforgettable experience. It is hoped that pollution-free buses will pick up the visitors after they have disembarked in the Virginia area and transport them to historic Williamsburg. In addition, it is hoped that express buses connections will be provided to the Eastern Shore.

Few would deny that we desperately need breakthroughs in the transportation area. A TACV operating between the District of Columbia area and Annapolis in conjunction with a high-speed marine vessel between the Baltimore-Annapolis area and the Williamsburg area will permit American citizens and our many foreign visitors to travel in the transportation of tomorrow to these historic sights, after which they will be allowed to walk in and enjoy the rich history and heritage of this Nation.

Mr. President, I suspect there are some who will feel that it is preposterous to have marine and land vessels traveling at such lightning speeds. It is interesting to note that textbooks up to shortly before the Civil War never made reference to metal vessels. Why? Everyone knew that iron would not float and that even if it would, its effect on the compass would be fatal. Furthermore, iron could not withstand the corrosion and fouling of the hostile marine environment. These arguments all fell by the wayside as the first argument against the nonfloatability of iron was demonstrated a fallacy.

Today even with our achievements in space and other scientific endeavors, I am certain that one could list a string of arguments why this marine-land transportation system will not succeed. But it is risky business to bet against our

Nation and its scientific community. Indeed, the history of our country chronicles the accomplishment of what was thought to be impossible.

I believe that the transportation needs of this country and the upcoming celebration coincide to provide us with an opportunity to push developments of this technologically advanced land-water transportation system. I strongly urge early and favorable action on this measure, and I am certainly encouraged by the great interest and support given by Senators thus far, as indicated by the large number of my colleagues who have consented to cosponsor the legislation.

Mr. President, before closing, I want to thank the AFL-CIO maritime committee for advancing this forward-looking and imaginative proposal. I want to give special thanks to Mr. Hoyt Haddock and Mr. Joseph Salzano who have devoted countless hours on this project.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 4023

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bicentennial Advanced Technology Transportation System Demonstration Act".

Sec. 2. (a) For the purpose of providing the millions of citizens of the United States and foreign nations who will visit the national capital area during the Bicentennial of American Independence celebration with a pleasant, efficient, and unique way of seeing the historic cities and sights of such area and providing practical demonstrations of technologically advanced transportation systems which will attract national and international attention and recognition and demonstrate to the world that the United States will continue its leadership in the world of tomorrow, the Secretary of Transportation is hereby authorized and directed to make an investigation and study for the purposes of determining the feasibility, social advisability, environmental impact, and economic practicability of—

(1) a tracked air cushioned vehicle or other high-speed ground transportation system between Washington, D.C. and Annapolis, Maryland, with appropriate intermediate stops, and

(2) a surface effect vessel or other high-speed marine transportation system between the Baltimore-Annapolis area in Maryland and the Yorktown-Williamsburg-Norfolk area in Virginia.

(b) In conducting such investigation and study, the Secretary—

(1) shall consult with appropriate Federal, State, local, and District of Columbia agencies; and

(2) may enter into contracts or other agreements with public or private agencies, institutions, organizations, corporations, or individuals without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

(c) The Secretary shall report the results of such investigation and study together with his recommendations, to the President and the Congress no later than nine months after the enactment of his Act.

Sec. 3. If after carrying out the investigation and study pursuant to section 2, the Secretary of Transportation recommends the establishment of either the transportation system described in subsection (a)(1) or

(a)(2) of such section or both such systems, he may, to the extent funds are appropriated for the purpose of this section, enter into such contracts and other arrangements as necessary for the construction and operation of such system or systems, except that the system described in such subsection (a)(1) may not be constructed unless the State of Maryland furnishes the necessary rights-of-way, to the extent such rights-of-way are presently owned by such State within existing highway alignments or acquired by such State with funds authorized under this Act and determined useable for such system by the Secretary of Transportation.

Sec. 4. There are authorized to be appropriated such amounts as are necessary to carry out the provisions of this Act.

EXHIBIT 1

METRO IS COMING TO MARYLAND: NEW CARROLLTON—PROSPECT MODERN TRANSPORTATION CENTER—1976

The New Carrollton (formerly Ardmore) Metro station offers a unique opportunity for a sophisticated transportation center, in combination with the relocation of the Penn Central Metroliner Hispeed station, coordinated feeder bus service and adequate parking facilities.

The entire New Carrollton Metro alignment on the Maryland side is under final design, including the stations at Cheverly, Landover and New Carrollton. Construction is expected to begin in 1973, with operations scheduled to commence in 1976.

The Federal Railroad Administration has approved design funds for design of a new Metroliner station facility adjacent to the New Carrollton Metro station. The design will be performed by the same firms under contract with WMATA for Metro's station design and the station will conform to Metro's design standards.

The New Carrollton station will be located east of the Penn Central Railroad tracks approximately one-half mile northeast of John Hanson Highway or approximately halfway between the John Hanson Highway and the Capital Beltway. The station will have a 600-foot long center platform.

A mezzanine containing fare equipment will be located under the platform near the center. Two access points are proposed; one southeast of the station and the other northwest of the railroad tracks. The two access points will be connected to the mezzanine by a pedestrian tunnel. Three escalators will connect the mezzanine to the platform.

Automobile passenger loading areas, bus facilities and auto parking lots will be located adjacent to both access points. Each will have six bus bays, a 30-space kiss-and-ride facility including space for taxicabs, and approximately 500 parking spaces.

The WMATA 1990 traffic forecast projects that approximately 18,800 people would be using the New Carrollton station daily, with 3,000 entering or leaving the station during the peak hour.

Extensive street improvements are necessary to insure efficient, safe, and convenient pedestrian and vehicular circulation both in the immediate area of the station and throughout its service area. Both the Prince George's Department of Public Works and the State Highway Administration will be involved in construction of new roadways in the area, as well as improvements to existing road (see map). Although it will be a difficult task, every effort is being made to assure that these necessary roads are constructed in time for the opening of the New Carrollton line.

The New Carrollton line will be the first of the four Metro alignments to serve Prince George's County. Total projected daily ridership in 1990 originating at the three Maryland stations on the line is 40,000.

EXHIBIT 2

TRIAL RUNS FOR A 100-KNOT NAVY

PROTOTYPES, SOON TO BE TESTED AT 80 KNOTS, PRESAGE LIGHTNING-FAST LOW-COST FLEETS

Destroyers fast enough to outrun torpedoes and able to dart out of the path of surface-to-surface missiles. Aircraft carriers that can move through the water so quickly that their planes are able to take off almost straight up.

It sounds like science fiction. But a fleet of such naval ships may eventually come from sea trials, soon to begin of two experimental craft built by Bell Aerospace Corp. and Aerojet-General Corp. for the U.S. Navy.

The 100-ton aluminum vessels, called surface-effects ships (SES) are neither air-cushion vehicles nor hydrofoils, but descendants of both. They should be able to "fly"—skimming across the water on giant air bubbles—at almost 80 knots. This would be about double the top speeds of present-day Navy ships and theoretically could be maintained even by surface-effects craft as big as aircraft carriers.

The trick is in the design. A conventional air-cushion vessel has a flexible skirt all around its hull to hold its air cushion in place, while the SES has a skirt only fore and aft. Protruding down from each side of a surface-effects ship's hull are solid wall-like extensions that stay partially submerged even when the ship is "flying."

These solid extensions, the Navy says, give a surface-effects ship far greater lateral control than is possible for any air-cushion vessel. And because an SES hull is able to lift almost completely out of water, the ship has a speed potential close to 100 knots.

A hydrofoil can approach this speed but can not be built as large as an SES, Navy designers say.

STREAK

The speed of surface-effects ships, according to Admiral Elmo R. Zumwalt, Jr., Chief of Naval Operations, will give the Navy a major advance in fast-reaction ferrying of troops and supplies. And the surface-effects ship could go a long way toward neutralizing Russia's 3-to-1 lead over the U.S. in submarines.

Submarines have always been difficult to locate and attack, Zumwalt points out. And recent advances in hull design and propulsion have made subs as fast as, or faster than, most surface ships.

The SES, however, may restore the speed advantage to the surface fleet. And it has another big plus that will appeal to Congress.

With construction costs of big Navy ships escalating astronomically—the price tag on a conventional aircraft carrier is now approaching \$1-billion—Zumwalt sees the surface-effects vessels also as an opportunity to direct the Navy back to smaller, swifter, hard-hitting ships that should be able to be built in large numbers at comparatively low cost.

COUSINS

The Bell and Aerojet surface-effects ships appear similar, but they do have basic design differences. Aerojet's version is 82 ft. long and 42 ft. wide, somewhat larger than Bell's 77-ft. length and 35-ft. width. But the greatest difference between the craft is in the type of propulsion system they use.

Aerojet's ship has four 3,500-hp. Avco Lycoming marine gas-turbine engines to draw water in through inlets and shoot it under pressure out of a nozzle at the rear of the craft to provide thrust. This eliminates the need for propellers. The same engines drive three fans which create the craft's air bubble.

The Bell design is more conventional. It has three 4,500-hp. Pratt & Whitney marine gas turbines to drive two semi-submerged high-efficiency propellers. But it also carries three smaller engines to create its air bubble.

The Aerojet craft cost \$18-million to build, according to the Navy, and the Bell SES cost \$14-million.

After builder's trials, the Navy intends to take over both ships for further testing. If the concept still looks good, the next step will probably be to order the design and development of a 2,000-ton experimental ship. If that craft proves out, still larger sizes will be attempted.

"From what we know now, we see no barrier to the size of this type of ship," says Rear Admiral William H. Livingston, director of the Navy's Air, Surface & Electronic Warfare Research Div.

"In fact, some design calculations show efficiency rising with increase in size," Livingston continues. "But we are not now visualizing surface-effects ships larger than 10,000 tons. And at 10,000 tons, the use of nuclear propulsion begins to look attractive for the SES."

THE 100-KNOT NAVY

(By Larry L. Booda)

"Almost all Navy missions can be enhanced by the use of Surface Effect Ships because they can go faster."

That is Rear Admiral William H. "Tag" Livingston talking. He is referring to a whole new family of oceangoing vessels that offer greater maneuverability and speeds up to 125 knots. Compared with the current top speed of a modern destroyer, something on the order of 40 knots that represents a quantum jump in performance.

SESSs, as the surface effect ships are referred to in the Navy, combine features of hydrodynamics and aerodynamics, bringing together some of what is best from the minds of naval architects and aeronautical engineers. Test craft have already reached the speed of 80 knots. Prototypes now being built show promise of surpassing the 100 knot mark. The gap to the 125 knot goal is closing rapidly.

Admiral Livingston, director of the Air, Surface and Electronic Warfare Division under the directorate of research and development under the Vice Chief of Naval Operations, isn't alone in his enthusiasm. Two other officials even higher up sounded equally enthusiastic in their testimony, regarding the upcoming high speed Navy, before congressional committees.

One type of vessel under development is the hydrofoil, a craft whose underwater "wings" mounted on struts lift the hull clear out of the water. Admiral Elmo R. Zumwalt, Chief of Naval Operations, appeared recently before the Senate Committee on the Armed Services.

He stated, "We have deployed two patrol gunboats to the Mediterranean to trail Soviet missile ships operating within range of our major combatant ships. . . For the future we are developing plans for a Patrol Hydrofoil Missile (PHM) boat to carry out the same surveillance mission plus an attack mission. Planned initial procurement is Fiscal Year 1973. Releasing destroyers for more essential duties, these hydrofoil boats will trail enemy missile ships operating within missile range of our major units and will attack them if they attack our ships."

REVOLUTIONARY PROPORTIONS

He added that the use of patrol gunboats and hydrofoils will permit optimum use of the inadequate number of destroyers the Navy will have during the 1970s in strike carrier task forces and major escort forces.

The second and third kinds of vessels being developed by the Navy are also lumped under the SES category. One is the Air Cushion Vehicle (ACV) and the other is the Captured Air Bubble (CAB). Both make use of an air cushion created by fans, holding the craft completely above the water in the case of the ACV and with only sidewalls submerged in the case of the CAB.

Admiral Zumwalt had this to say about the SES, "I regard it as a potential development of revolutionary proportion. If, as it appears

to be possible, we can produce ships up to many tons and capable of high speeds, we will have, to a great measure, nullified the submarine torpedo threat against such ships. (Ed. There is virtually no hull underwater to hit.) Accordingly, I have singled out this development for special consideration. The Fiscal Year 1972 budget requests funding for contractor and governmental test and evaluation of two 100 ton craft and for procurement of long lead time propulsion items for a military experimental prototype of larger displacement."

Hydrofoils weighing 60 tons have already been tested in the Southeast Asian Theater, the same committee was told by Dr. Robert A. Frosch, Assistant Secretary of the Navy for Research and Development. Craft of 150 tons and even larger are being developed, he also said. He suggested the use of ACV's for moving men and equipment ashore in amphibious operations and other applications as well. Their high speed will reduce exposure to enemy fire and thus reduce casualties, he stated.

Dr. Frosch calls the hydrofoil a surface interceptor. He told the committee, "Hydrofoil developments have progressed through operational evaluation to the stage where combined NATO operations can demonstrate the tactical impact of a craft which can have long endurance remote from its support but which can get up and intercept, at speed, hostile ships in coastal waters."

Probable missions to which these craft seem likely to be assigned cannot be talked about specifically, but it can be stated that the capabilities of hydrofoils and SESSs cover a wide spectrum including antisubmarine warfare, mine and anti-mine warfare, surface warfare, patrol, underwater demolition and sea-air-land team support, interdiction of many kinds, missile launching, both air and surface, and amphibious assault.

A conventional ship such as a destroyer or cruiser operating at higher speeds uses most of its power simply pushing water aside. Almost all ships are of this type and are called "displacement" vessels. A cruiser, for instance, can typically make 16 knots cruising on two of its eight boilers. Doubling the number, to four, thus doubling the horsepower produced, the ship can then make 24 knots. Adding two more for a total of six, boosts the speed to 29 knots. All eight boilers perking away can add only three more knots for a total of 32.

Admiral Livingston cited another example. A destroyer of standard configuration can make 27 knots producing 15,000 horsepower. Doubling the horsepower to 30,000 enables the ship to cruise at only 32 knots.

Thus it was apparent to naval architects that some other ways to achieve higher speeds on the surface of the ocean had to be found. Fortunately, World War II produced a quantum jump in the technologies needed to develop faster vessels. Aeronautical engineering created lighter weight, stronger frames that could be adapted to other uses.

It was the hydrofoil that attracted first interest. Simply put, the hydrofoil resembles an aircraft wing, its cross section profile typically humped in the upper surface to create lift, for both air and water are fluids, with water being 800 times denser than air. Thus the hydrofoil is really a water wing.

Research on this approach was started in 1947 by the former Bureau of Ships, but it remained on the back burner until 1960 when serious development of a vessel was begun. As with all subsequent vessels of this type, the first version, the SEALEGS, appears to be a normal boat while sitting in the water and cruising at low speed. Its hull differs little from other boats. But when extra power is added, the entire hull is gradually lifted from the water, the water wings remaining just under the surface, offering less resistance to the water than the hull.

The United States is somewhat behind the rest of the world, both Western and Iron Curtain, in hydrofoil development and use; many rivers and lakes in Europe already boast hydrofoil service. One of the fanciest, a streamlined vessel that could have come out of a James Bond movie, plies between Palomares, Spain, and Tangier, Morocco, across the Strait of Gibraltar.

Responsibility for hydrofoil development rests with the Ship Systems Command. The control office is located at the Naval Ship Research and Development Center, Carderock, Md., William Ellsworth is Acting Test Director for Hydrofoils. This office is also responsible for a portion of the ACV development being pursued by the Navy.

ATTRACTING GREATEST ATTENTION

Complicating the organizational setup, is a Navy-Department of Commerce Joint Surface Effect Ship Project Office (JSESP) also located at Carderock. It too is developing ACVs. Some of the confusion should disappear, however, on July 1st when the Department of Commerce is scheduled to withdraw. NAVY was told by a Commerce spokesman that Commerce's Maritime Administration for the next few years will concentrate on building up the Merchant Marine using current ship technology rather than pursuing systems that show little immediate promise of successful application.

Four hydrofoils are attracting the greatest attention at present. Perhaps the flashiest are the TUCUMCARI, a highly maneuverable craft built by the Boeing Aircraft Corp., and the FLAGSTAFF, built by the Grumman Aerospace Corp. Both of these 58 and 67 ton craft were shipped to South Viet Nam in August, 1969, where they were assigned to the Market Time Forces based in Da Nang. They were given missions designed to test their capabilities in rough water and their quick reaction time when needed. The TUCUMCARI is now on tour of NATO countries demonstrating its capabilities.

The two craft rotated five day duty periods, with one on a "ready alert" status and the other in a standby or upkeep status. Patrols lasted six to ten hours and covered from 190 to 270 nautical miles. They proved their worth by operating in sea states as high as five. (Ed. A five force sea state has nine foot waves.) Thirty-seven per cent of these operations were made in such seas—operating at speeds of 37 to 50 knots, even when heavy rains and high winds restricted visibility. Of the time they spent at sea the two craft spent 342 hours "foiborne," or up out of the water, logging 14,843 miles in that condition at an average speed of 43.5 knots.

That there is enthusiasm for hydrofoils as patrol craft is understandable after this demonstration. One result of this operation will be the 160 ton PHM mentioned by Dr. Frosch, if it is funded in the next fiscal year.

Much more than simply designing the hydrofoils is involved in development of the craft, however. Propulsion, for instance, must include greater power in smaller packages. For such higher power requirements the gas turbine has been found ideally suited and has been applied to every hydrofoil and SES intended for high speed missions. Hydrodynamics engineers, in fact, have found themselves faced with the water equivalent of supersonic speeds, a phenomenon known as cavitation. They have learned to take advantage of this condition in both the foil design and supercavitation propellers, (a propeller that revolves so fast that it creates a bubble shaped void around the blades that is almost a vacuum).

The most interesting form of propulsion being applied to several new vessels is the waterjet. Taking a note from the page of gas turbojets in which gas is forced in one direction to make a reaction in the opposite direction, the waterjet does the same thing with the fluid that is 800 times as dense—water. The system is operational in the TUCUM-

CARI and seems to point to even greater successes and applications in the future.

Rounding out the hydrofoil stable are the 120 ton HIGH POINT, built by Boeing and the 320 ton PLAINVIEW, built by Grumman, the largest craft of this type in the world. Both are undergoing extended testing.

FLEXIBLE SKIRTS VS. HARDWALLS

It wasn't until 1958 that serious attention was focused on the more exotic Surface Effect Ships (SES). In that year the Office of Naval Research and the Bureau of Ships conducted experiments with four small air cushion vehicles. SESs operate, as stated earlier, by creating a cushion of air created by gas turbine powered fans with the cushion being trapped by one of two methods. In one, the Air Cushion Vehicle (ACV), the air is held by a flexible skirt extending down from the hull. The ACV, therefore, rides completely clear of the water and land. The bigger the ACV the higher the waves and land obstacles it can surmount. Propellers provide their forward propulsion. In operation these crafts are a spectacular sight, for the escaping air creates spray on all sides until forward speed is attained.

By 1963, the largest-to-that-time ACV made its appearance. Under contract to the Bureau of Ships, the Bell Aircraft Co. produced the 35 ton SKMR-1, or HYDROSKIMMER. This writer had the privilege of "flying" the craft at Buffalo, N.Y. The SKMR-1 demonstrated that she could readily take off from land or water, travel as fast as 70 knots over mildly rough water and easily come back on land.

ONE MILLION CHANNEL PASSENGERS

On the other side of the Atlantic the ACV originated with a patent issued in 1955 to an Englishman, Christopher Cockerell. The Bell effort paralleled that of the British and in 1963 that company entered into a technical and licensing agreement with Hovercraft Development, Ltd., now the British Hovercraft Corp. Between the two companies 90 transport ACVs are operational in the world today. One type, the MOUNTBATTEN, has ferried more than 1 million passengers and 230,000 vehicles across the English Channel since 1968. In the United States an experimental passenger service was operated across San Francisco Bay under auspices of the Department of Transportation.

On the military side, Bell manufactured six 10-ton ACVs designated the SK-5 which were tested in the Mekong Delta area of South Viet Nam by the U.S. Navy and U.S. Army. Their missions covered a wide range in the many waterways and marshes of that area.

As the 1960s progressed the Department of Commerce interest increased. To achieve economy of effort, President Lyndon B. Johnson decreed, in March of 1966, that JSESPO be formed to combine the talents of the Navy and Commerce. The work was to include, he stated in his order, "Research on an ocean-going surface effects vessel capable of skimming over water at speeds of more than 100 knots." JSESPO was created June 20, 1966.

As research progressed, still another kind of SES showed promise. This type, called the Captured Air Bubble (CAB) vehicle, features two straight fore-and-aft sides making it look like a deep hulled boat rectangular in shape. Since they have no curvature and are thin, the sides can slice through water with a minimum drag. In addition to the sidewalls, a forward and aft hinged trapdoors, help capture the air cushion but give with the waves. The CAB, because it loses much less air than the ACV, requires only one-third as much power to maintain the cushion.

TODAY'S ACV'S AND CAB'S

Enough has been learned to this date to know that hydrofoils will be able to act as sea surface interceptors but will be limited

in sizes to less than 200 tons. They do, however, offer long endurance, or long time on station in addition to high speed when needed.

The ACV appears to be ideal for landing troops—actually disembarking them on land, not grounding them on the beach edge; thus offering the enemy a ready target. As the next logical step in this program, the Navy has let contracts of \$1,950,000 each to the Bell Aerospace Co. and Aerojet General Co. to build two 160 ton air cushion Amphibious Assault Landing Craft (AALC) apiece. The AALC C150 as it is designated, will offer 1,700 square feet of cargo space capable of taking up to 75 tons of supplies on pallets or a 60 ton battle tank. Major differences in the approaches of the two companies are in the types of skirts employed, the number of propellers and number of lift fans.

It is the Captured Air Bubble system however, which seems to have the brightest future as far as the Navy is concerned. Not only could it fit many diverse roles but its hard sidewall design lends itself to much larger sizes. Dr. Frosch told NAVY that, from what has been learned so far, vessels in the 4,000 to 5,000 ton range are possible.

But to prove this technology beyond a doubt a new project is underway, again with contracts to Bell and Aerojet-General. Each company is building a 100 ton model 78 feet long and a half as wide.

After testing of these two SESs, due to be completed sometime in 1972, the next step the Navy will follow will be construction of a multi-thousand ton development test ship, according to James Decker, JSESPO's project director. He and others connected with the project believe in progressing logically, but are highly optimistic about the future of the captured air bubble approach.

Recently Bell received the hull of its model from Livingston Shipbuilding, Orange, Tex. At a ceremony at its Michoud, La., plant, the principal speaker, Representative F. Edward Hébert, (D-La.), Chairman of the House Committee on the Armed Services, noted a 100 knot speed capability and said, "When I say to you that I envision these ships as being in our future Navy before the '80s, I do not think I am using hyperbole for effect or stretching my own imagination. This is your future Navy."

By Mr. ROTH (for himself and Mr. Boggs):

S. 4024. A bill to amend the Internal Revenue Code of 1954 to disregard children's benefits received by an individual under the Social Security Act in determining whether that individual is a dependent of a taxpayer. Referred to the Committee on Finance.

Mr. ROTH. Mr. President, the bill I am about to introduce on behalf of myself and the senior Senator from Delaware (Mr. Boggs) will no doubt seem insignificant when compared to the other legislative efforts on which the Congress embarks. Ours will not set a grand and new policy for the Nation, nor will it appreciably shift any existing policy. The bill is only six lines in length, and I doubt seriously that it will merit mention, much less headlines, in any of today's great journals or papers.

What Senator Boggs and I hope our bill will do is help a few people.

Before I describe this legislation, I would like to tell the Members how I happened to draft this six-line bill.

On May 10, 1972, I received a letter from a constituent, Mrs. Marian Coverdale, of Houston, Del. And, if there is no objection, I would like to read this letter:

DEAR SENATOR ROTH: I am writing in an appeal for help in my problem with Internal Revenue Service. This is my story.

My husband died in 1968, leaving me with four children, ages 17 yrs., 15 yrs., and twins 2½ years. I applied for and received Social Security benefits for these children. However, I still claimed them as dependents on my Income Tax return. The problem is this: They are checking my Income Tax Return for the year 1970, because they say that since they received Social Security benefits I cannot claim them as dependents. Now, this seems a little ridiculous to me because anyone can tell you that Social Security benefits will not contribute enough income to keep an individual alone.

This is all I receive and I have never asked for anything else as far as medical, dental, or anything. I have continued to work every day, which necessitates babysitting money, which I am now wondering if it was a wise choice. My husband, being a heart patient, did not obtain the mortgage fee insurance he should have had. As a result of this, I had to give up the home we had built. I have made personal loans when the going became rough and have done the last and final thing I can do. I have sold my furniture to pay bills. I have nothing else to sell. I have borrowed the limit I feel I can repay.

The Internal Revenue Service notified me that I must substantiate that I had contributed more than Social Security benefits towards the keeping of these children. This I have tried to do as you will see by the enclosed. Cancelled checks are all I have to prove anything, since I had no idea that there was any question that I could claim them for dependents. They will not accept what I have given them as proof. I did not submit copies of cancelled checks for the whole year, but picked different months to try to show them what I had given them was correct. I do not know what else I can do. I do not know that I think I should be allowed some credit for working every day and using this money to keep my family in a home, food, clothing, heat, medication, etc.

There are only a few alternatives that I can think of: No. 1—Send all the bills pertaining to the children's upkeep to IRS, No. 2—Have the children put in a home and let them receive the Social Security on which they must be kept, No. 3—Quit work, apply for additional benefits and let the taxpayers keep all of us, or No. 4—Find the deepest river and highest bridge and take a flying leap and let the State worry about keeping the children. What would you suggest?

I only have ten days to come up with more proof for IRS, but I really at last am at my wit's end. I only know that it takes all I make plus what they receive to keep a roof on their heads, clothes on their back, food in their stomachs, insurance, and medication when they are ill.

Please help me. I gave you support, now try to give me some.

Sincerely yours,

MARIAN A. COVERDALE,

HOUSTON, DEL.

I would note that Mrs. Coverdale's total earnings for 1970 were \$3,710; of this, the Internal Revenue Service was going to demand a tax of \$433. If it is not clear from her letter why Mrs. Coverdale was going to be required to pay this money, let me briefly explain.

Mrs. Coverdale's children were receiving monthly social security benefits, because of the death of their father. Under the present law, these payments must be considered as the child's contribution to his own support. In order to legally claim the children as dependents, Mrs. Coverdale, in effect, had to prove that she contributed more money to the support of the children than they received from the

Social Security Administration. The fact that the monthly benefits were not enough for a family of five to live on is immaterial. The fact that Mrs. Coverdale could refuse to work and receive public assistance—which would certainly cost the Government more than \$433—is immaterial. And the fact that most people in Mrs. Coverdale's situation simply do not have canceled checks and receipts—much less from 9 years past—is immaterial. Ironically, if Mrs. Coverdale were richer and able to put the social security payments in some sort of savings account for her children, she would not have been confronted with the problem; if the money is saved instead of spent it is not considered the child's contribution to his own support. But, unfortunately for Mrs. Coverdale, since she and her children had to spend the money in order to live Mrs. Coverdale was dunned by the Internal Revenue Service.

Simply out of curiosity, Mr. President, I called the Delaware State agencies to find out whether Mrs. Coverdale and her family would be eligible for public assistance if she were to quit work. Without providing her name, I asked what forms of assistance a widow with four children—aged 17, 15, twins 2½—could receive if she and the children were already receiving \$2,400 per year in social security. I also asked what the approximate annual value of this assistance would be. This, Mr. President, is what I learned:

Mrs. Coverdale would receive cash assistance payments of \$67 per month, or \$804 per year; since some of her children are under 6 years of age, Mrs. Coverdale would be exempt from the "training or employment" requirement. But even though not required to do so, she could opt to receive job training, in which case the Government would pay for child care for the twins aged 2. The approximate weekly cost for such child care is \$35; therefore the annual cost of child care for Mrs. Coverdale's children would be \$3,640. In addition, she and the children would be eligible for medicaid payments. Assuming an average monthly cost of \$5 per child, the value of this service would be \$240 per year. And, lastly, the Coverdale family would be eligible for free food commodities, with an average annual value of \$697. In short, Mr. President, if Mrs. Coverdale had chosen not to work, she and her children would have cost our taxpayers \$5,381 per year, above and beyond the social security payments. Instead, Mrs. Coverdale chose to work, for which we demanded \$433 in income tax.

I should point out that ultimately Mrs. Coverdale was able to prove that the children were dependents and she was not required to pay the \$433. But having learned her lesson in tax year 1970, Mrs. Coverdale no longer even attempts to claim the children. It is easier to have the taxes withheld than to fight the Internal Revenue Service each year.

Frankly, Mr. President, I consider this one of the most outrageous and discriminatory abuses I have ever encountered. I object not only to the fact that Mrs. Coverdale might be required to pay taxes in a situation like this, but the fact that she can be harassed and intimidated in

such a manner. Mrs. Coverdale's only crime was to work. Mrs. Coverdale, of her own volition and because she thought it her duty as a citizen, did exactly what we spend billions of dollars trying to encourage: An honest days work. And for this we taxed her and we harassed her.

I will not belabor this point any further, Mr. President. I believe I have made the object of my bill clear enough: It is to help the Mrs. Coverdales of our country. My bill makes a simple, easy to understand amendment to the Internal Revenue Code. The amendment reads as follows:

(f) Child's Social Security Benefits.—For purposes of subsection (a), child's insurance benefits received by or on behalf of an individual under section 202(d) of the Social Security Act shall not be taken into account in determining whether the individual received more than half his support from the taxpayer.

Mr. President, this is a simple amendment; I hope that, as such, it can be expeditiously acted upon by the Finance Committee, to which I assume it will be referred, so that we can correct this situation as soon as possible.

By Mr. INOUE:

S. 4025. A bill to designate the Federal office building to be constructed in Honolulu, Hawaii, as the Prince Jonah Kuhio Kalanianaʻole Federal Building. Referred to the Committee on Public Works.

Mr. INOUE. Mr. President, I have the honor today to introduce a bill which would designate the new Federal office building to be constructed in Honolulu as the Prince Jonah Kuhio Kalanianaʻole Federal Building.

Prince Kuhio was a popular political figure who was first elected to the 58th and the nine succeeding Congresses as the delegate from the Territory of Hawaii. The memory of his long and distinguished service is still respected in today's Hawaii, decades after his untimely death in 1922.

He was born in Koloa, Kauai, on March 26, 1871, and attended the Royal and Punahou Schools in Honolulu. He also studied for 4 years at St. Matthew's College in California and attended the Royal Agricultural College in England. He later graduated from a business college in the United Kingdom.

In 1884 he was created a prince by royal proclamation of the existing monarchy of Hawaii. He began his public service in the Hawaii Department of the Interior, in which he served with great distinction.

Later Prince Kuhio was to show the cosmopolitan interests that have always characterized Hawaiians. After the monarchy was overthrown, he traveled to Africa and served in the British Army in the Boer War, the same conflict which launched the career of the then unknown Winston Churchill.

There are few, if any, other individuals in the history of the Congress who have enjoyed such a colorful and productive career. I believe that it would be appropriate to honor the man who gave so much of his time to his country and to his people by naming the new Federal

building after him. It would be a meaningful remembrance on our part.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 4001

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the names of the distinguished Senator from Alabama (Mr. ALLEN) and the distinguished Senator from Arizona (Mr. GOLDWATER) be added as cosponsors to the social security bill (S. 4001), seeking to raise the earned income of social security retirees from \$1,680 to \$3,000 a year, introduced by the distinguished Senator from Vermont and the Senator from Montana now speaking.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 4012

At the request of Mr. SCOTT, the Senator from Pennsylvania (Mr. SCHWEIKER) was added as a cosponsor of S. 4012, a bill to make additional immigrant visas available for immigrants from certain foreign countries, and for other purposes.

ADDITIONAL COSPONSOR OF A RESOLUTION

SENATE RESOLUTION 145

At the request of Mr. CASE, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of Senate Resolution 145, urging the Voice of America to make broadcasts in Yiddish into the Soviet Union.

SURFACE MINING REGULATION ACT OF 1972—AMENDMENTS

AMENDMENT NO. 1571

(Ordered to be printed and to lie on the table.)

Mr. STEVENSON submitted amendments, intended to be proposed by him to the bill (S. 630) to provide for the cooperation between the Secretary of the Interior and the States with respect to the future regulation of surface mining operations, and for other purposes.

FOREIGN ASSISTANCE ACT OF 1972—AMENDMENT

AMENDMENT NO. 1572

(Ordered to be printed and to lie on the table.)

Mr. CANNON submitted an amendment, intended to be proposed by him, to the bill (H.R. 16029) to amend the Foreign Assistance Act of 1961, and for other purposes.

AMENDMENT NO. 1573

(Ordered to be printed and to lie on the table.)

Mr. SCOTT (for himself and Mr. McGEE) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 16029), supra.

AMENDMENT NO. 1574

(Ordered to be printed and to lie on the table.)

Mr. CHURCH. Mr. President, I submit an amendment which I intend to offer as a substitute for the amendment by the

minority leader, Senator Scott, that will be voted on tomorrow.

Senator Scott's amendment would increase the military aid authorizations in this bill by \$370 million—a 27-percent increase. He wants to take \$1.75 more out of the pockets of every American citizen in order to buy arms for foreign countries—arms which do not, in any way, enhance the security of the United States. My amendment provides only for an increase in supporting assistance of \$35 million which would be earmarked for Israel. This would bring the amount of supporting assistance for Israel back to the level contained in the bill earlier defeated by the Senate, \$85 million. The taxpayers would thus be spared an additional \$335 million in deficit spending.

In the 1970 fiscal year, Congress appropriated \$815 million for the military programs involved here. This bill already contains \$535 million more than Congress thought was justified in 1970. Adoption of the Senator from Pennsylvania's amendment would result in a 110-percent increase above the 1970 level. Do Senators really think that the American taxpayers should go \$335 million deeper in debt to pour more arms into Taiwan, Thailand, Greece, Korea, and Indonesia? If the American people had an opportunity to vote on the question, I have no doubt what they would decide.

For the 1970 fiscal year, there was a budget deficit of \$13 billion. This year it is officially estimated at \$38 billion, a threefold increase in 3 years. The debt is now \$437 billion and \$72 billion of that was incurred in the last 3 Nixon years. If we cannot hold the line in Congress on spending for foreign aid, where can it be held?

I wish to make it clear that the authorizations in this bill are only about one-fourth the \$5.6 billion military assistance package proposed by the executive branch for the 1973 fiscal year. It does not include, for example, \$2.9 billion for South Vietnam, Laos, and the Korean forces in Vietnam, or ship loans, or the value of excess arms given away, or the costs of supporting 47 military aid missions abroad. The total flow of U.S. arms abroad is estimated at \$8.5 billion, when Government cash sales and commercial sales are included. The United States is in the arms export business in a bigger way than all other nations combined.

I ask unanimous consent to have printed in the RECORD after my remarks certain pertinent tables.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CHURCH. Mr. President, I do believe that an additional \$35 million in supporting assistance for Israel is fully justified; so did the full Senate when my original amendment was adopted by a vote of 54 to 2 on June 23. Although the Senate should restore the full funding level approved earlier for Israel, there is no justification for restoring the other money amounts to the earlier levels. The Senate defeated the bill concerning the amounts now sought to be restored by the Senator from Pennsylvania. The Committee on Foreign Relations has already been too generous in allowing

funding at the fiscal 1972 levels. It seems that the foreign aid bill is like the proverbial cat with nine lives—the Senate cannot seem to kill it, no matter how hard it tries.

I hope that the Senate will adopt my amendment and save the taxpayers \$335 million in foreign aid.

I ask unanimous consent that the text of the amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1574

In lieu of all of the language proposed by Mr. SCOTT insert the following:

On page 14, strike out lines 7 and 8 and insert in lieu thereof the following: "to exceed \$618,000,000, of which not less than \$50,000,000 shall be available solely for Israel" and inserting in lieu hereof "fiscal year 1973 not to exceed \$585,000,000, of which not less than \$85,000,000 shall be available solely for Israel."

EXHIBIT 1

COMPARATIVE DATA ON FOREIGN AID ITEMS

[In millions]

Program	H.R. 16029 as amended	Scott amend- ment	Church substi- tute
1. Grant military assistance....	\$400	\$600	\$400
2. Supporting assistance.....	1 550	1 685	2 585
3. Military credit sales.....	400	435	400
(a) Aggregate ceiling.....	2 (550)	2 (600)	2 (550)
Total security.....	1,350	1,720	1,385
4. Bangladesh assistance.....	100	100	100
Total security and economic.....	1,450	1,820	1,485

¹ \$50,000,000 earmarked for Israel.

² \$85,000,000 earmarked for Israel.

³ \$300,000,000 earmarked for Israel.

Military and related assistance and arms sales programs, fiscal year 1973 (executive branch estimates)

	Amount
Military assistance grants....	\$819,700,000
Foreign military credit sales.....	629,000,000
Excess defense articles.....	1 245,000,000
Ships loans.....	39,600,000
Security supporting assistance.....	879,418,000
Foreign military cash sales (DOD).....	2,200,000,000
Commercial sales.....	722,598,000
Military assistance—DOD funded.....	2,924,700,000

Total military and related assistance and sales..... 8,460,016,000

¹ Valued at one-third acquisition cost.

Military aid funded through the Department of Defense budget for allied forces in Southeast Asia:

[In millions of dollars]

	Fiscal year—		
	1971	1972	1973
South Vietnam.....	1,848.9	1,824.1	2,431.2
Korea.....	208.2	188.9	133.5
Laos.....	155.8	240.3	360.0
Thailand.....	113.0	66.1	(¹)
Total.....	2,325.9	2,339.4	2,924.7

¹ Military aid for Thailand to be funded from the MAP program.

ADDITIONAL STATEMENTS

FEDERAL FLOOD RELIEF IN PENNSYLVANIA

Mr. SCOTT. Mr. President, I think we can all be proud of the tremendous job being done by Frank Carlucci and all the other officials working on Federal flood-relief in the Commonwealth of Pennsylvania. I ask unanimous consent that an article entitled "Frank Carlucci, Good Samaritan of Flood Area," published in the September 20 Philadelphia Inquirer, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FRANK CARLUCCI: GOOD SAMARITAN OF FLOOD AREA

(By Howard S. Shapiro)

WILKES-BARRE.—Frank Carlucci's job is a disaster—called Agnes.

Despondent people come to his office with problems and requests. Some of them cry.

He walks out on the street, they grab him by the arm. "Mr. Carlucci, I have to talk to you . . ." and the problems pour forth.

He sees the signs of despair on the streets where he was raised.

Affixed to the dirty and broken glass windows of empty storefronts are signs saying: "The valley with a heart—comin' back better than ever!"

It is almost three months since the Susquehanna River inundated the Wyoming Valley, and about one month since the Federal government set out to rescue its local image.

Enter Carlucci. The slim-framed 41-year-old director of the Federal Office of Management and Budget had been working on flood relief planning from his Washington office, but in hard-hit Wilkes-Barre, the residents saw only mass confusion at the Federal level.

Housing and Urban Development Secretary George Romney had come to survey the damages in August, and the residents gathered to survey George Romney. No one was pleased.

Add to this the complaints that President Nixon was receiving from Wyoming Valley folks. Federal trailers were standing around with no one to hook them up to sewage, water and electrical outlets.

The streets looked more like landfills. Living conditions, some residents said, were little better than conditions at massive relief centers during the onslaught a month before.

REPORT ON FLOOD CLEANUP

Here is a progress report on the flood cleanup in the Wyoming Valley:

HOUSING

Three-fourths of 13,816 homeless families are in winterized shelters.

LOANS

Small Business Administration has approved \$145.1 million in loans to 17,272 individuals and 532 businesses.

STORES

About 15 percent of more than 1,000 stores have reopened.

AID

U.S. has spent or contracted for \$350 million in assistance to help clean up damage estimated at \$1 billion.

So it is not hard to understand why Frank Carlucci was called off a Washington tennis court one August day to answer a phone call from Presidential adviser John Erlichman. "The President thinks you ought to go up there," Erlichman said.

Carlucci was returning home.

Since his arrival, Carlucci has oiled the bearings for Wilkes-Barre's huge Office of Emergency Preparedness setup.

As of this week, the office has approved

17,493 Small Business Administration loans and dispersed money to 12,487 of the applicants.

This adds up to \$119.5 million in home loans and \$11 million in business loans.

So far, the Carlucci staff has placed 10,000 Wyoming Valley families in emergency temporary housing—mobile homes and campers—and is working to find homes for about 3,500 more families.

Now, Carlucci is turning his efforts largely toward a mini-repair program, in which the Army Corps of Engineers will try to get as many people as possible back to their homes by cold weather.

"The first thing we had to deal with," Carlucci says, "was getting people out of their attics and into temporary housing. Then we went through the hookup phase, and we still have some problems there, with bottled gas supply.

Now, when we talk about temporary housing, I try to pull together all the aspects of living in a trailer park—transportation, recreation and so forth."

Carlucci says he looks forward to working with state Secretary of Community Affairs William Wilcox, who last week was appointed by Gov. Milton Shapp to a similar post on the state level.

"We can bring in the resources. We can help restore the community. But not without working with the state and local governments. Mr. Wilcox and I have laid out a course of action for our staffs. That doesn't mean, of course, that there still won't be differences of views.

Carlucci's efforts have been well publicized, in the Wyoming Valley media, and residents seem more aware of Federal efforts in the area. The President's envoy spends much of his time meeting with the residents.

"We know that he was sent here to try to alleviate our problems," says Mrs. Samuel Bosch, a member of the Flood Victims Action Council, the group spearheaded by fiery Min Matheson, the woman who orally assaulted Romney during his turbulent trip here last month.

"I think he's probably doing more than any one man can do under the circumstances," noted Mrs. Bosch, who headed a committee which met with Carlucci.

"But we don't know how much he can actually do for us. Some of our big problems have to be settled by legislation."

Those undoubtedly include the government's mortgage relief program, which some homeowners feel is unfair. Those eligible for SBA loans are to be given \$5,000 "forgiveness," and the government's detractors complain that the fixed amount has nothing to do with the amount of loss.

And many residents of Kingston, a largely Jewish bedroom community across the river from Wilkes-Barre, apparently have some complaints about President Nixon's visit a week ago. Mrs. Bosch says certain residents were disappointed because Nixon chose to visit the flood-smashed community on Rosh Hashanah, one of Judaism's holiest days.

The action council also felt that Nixon's stopover at Scanlon Field was superficial, since that is the trailer park where Carlucci holds his public meetings and is most well-known.

Alfred H. Ackerson, a retired banker who welcomed Nixon into his Scanlon Field trailer last week, says Carlucci's takeover brought a noticeable change.

"Before he came, the runaround here was terrific," says Ackerson, who lost all his belongings in the flood. No one gave you any kind of answer. You got the brush off. When he came, though, there was a big change in planning and results, in getting trailer sites and getting equipped."

"I think there has been a change," echoes Mrs. Doris McCloskey, a 38-year-old widow who lives with her three daughters, and a dog

and cat, in a trailer at the huge Barnum Park trailer camp.

Carlucci's job demands that he be a jack of several trades, a kind of Renaissance relief chief. To the thousands of Wyoming Valley citizens who suffer depression because of near-total losses, he offers psychological guidance.

To those who come with questions about the government, he is the top bureaucrat. He must feel at ease during discussions about home improvements, community affairs, urban renewal, finance and a host of other areas affecting a community which must start rebuilding, almost from scratch.

CAN WE DO BETTER?

Mr. STEVENSON. Mr. President, there are few men whose ideas about U.S. policy toward the United Nations are more authoritative or incisive than Richard Gardner's. Recently, the American Assembly published a monograph by Professor Gardner entitled "The United States and the United Nations: Can We Do Better?" I share Professor Gardner's view that we can and must do better, and I believe that his article is essential reading for anyone interested in international cooperation.

I ask unanimous consent that a summary of Professor Gardner's paper be printed in the RECORD.

There being no objection, the monograph was ordered to be printed in the RECORD, as follows:

THE AMERICAN ASSEMBLY

Richard N. Gardner, former Deputy Assistant Secretary of State for International Organization Affairs who now holds the Henry L. Moses chair of Law and International Organization at Columbia University, said that "the time has come to supplement balance of power politics with world order politics."

Gardner's program was set forth in a monograph issued today by The American Assembly of Columbia University. Among his recommendations:

The strengthening of the United Nations and other international organizations concerned with the common problems of mankind should be "the central preoccupation of U.S. foreign policy from here on in."

The United States should take a more "principled" approach to foreign policy by limiting its use of armed force to circumstances clearly permitted by the United Nations Charter and by submitting disputes to which it is a party to third-party judgment.

A "world order bargain" should be made with developing countries under which developed countries would provide more aid and developing countries would cooperate more fully in efforts to protect the environment and curb population growth.

U.N. decision-making procedures should be revised so that key decisions are taken in small committees with "weighted representation" for large and middle powers.

The United States should use future meetings with Soviet and Chinese leaders to urge their cooperation in measures to strengthen the U.N.'s peacekeeping and peacemaking role.

The United States should cooperate in new initiatives to resolve the U.N.'s financial problems, including a package settlement to pay off the U.N.'s debts and remove contested items from the regular budget.

The United States should seek advice and assistance from international agencies in dealing with domestic problems such as crime, urbanization and mass transportation.

An Under Secretary of State for Multilateral

Affairs should be appointed to coordinate U.S. policy in all multilateral organizations, regional as well as global, economic as well as political.

The U.S. Missions to the United Nations in New York and Geneva should be upgraded and strengthened by bringing in top level experts from outside the government.

A "world-wide competitive examination" should be offered to attract outstanding young people to serve with the U.N. Secretariat.

A "Naders Raiders for World Order" should be established to lobby on behalf of stronger U.S. support for international organizations.

The United States should provide adequate security for U.N. delegates and put up its promised share for the enlargement of the U.N.'s Headquarters in order to assure that the U.N. stays in New York City.

Professor Gardner declared that the United States was "beginning to default on its multilateral commitments all across the board." As examples he cited the failure of the United States to pay its share of the budget of the International Labor Organization and of contributions to multilateral development institutions as well as its importation of chrome from Rhodesia in violation of an embargo for which the United States voted in the Security Council. He also warned against efforts to place an immediate 25% limit on all U.S. contributions to U.N. agencies. As a result of these and other actions, he declared, "the United States is now on a collision course with the very international agencies in whose future it has an important stake."

Professor Gardner warned of "a widespread tendency for U.N. members to pay lip service to the United Nations, while at the same time pursuing their short-term interests, often at its expense. This has always been true of the Soviet Union. What is distressing, however, is that it has become increasingly true of other members, including the United States. Our country occasionally asked itself how the United Nations could help it to do what it had decided to do in Viet Nam; we never seriously asked ourselves how we might conform our Viet Nam policies to our U.N. commitments."

"The lack of a principled approach, of any serious attempt to articulate and live by consistent interpretations of the U.N. Charter and international law, is one of the most depressing aspects of present U.S. foreign policy. Our senior policy makers, like those in most other countries, ask only what the U.N. can do for them, not what they can do for the United Nations—or for the building of a civilized system of world order."

While commending the Nixon Administration's quest for a new world power balance, Professor Gardner questioned whether "balance of power alone is good enough."

"By itself, balance of power politics has not brought peace in the past. It is not likely to do so in the future unless accompanied by institutional arrangements to accommodate the interests of the competing power centers. Moreover, countries outside the five centers of power will demand—and rightly so—a fair measure of participation in the world political process."

"Furthermore, the balance of power concept by itself is manifestly inadequate in the face of the unprecedented situation in which mankind now finds itself. It follows that from now on a central preoccupation of U.S. foreign policy should be not just the development of a precarious power balance but the building of effective international machinery to manage mankind's common problems."

Professor Gardner argued that changes in U.S. domestic politics as well as changes in the world setting make a new foreign policy imperative: "Forced to choose between interventionism and isolationism, the American people will eventually choose isolationism. Multilateralism is therefore the only

chance in the long run to sustain a positive U.S. role in the world."

"One of the most important but least appreciated functions of the United Nations is in influencing the political process within member states toward more cooperative and outward-looking policies. In a certain sense, the United Nations constitutes an 'alliance of doves,' in which the outward-looking members of national governments can reinforce one another in their struggle with more inward-looking members of their national administrations."

"For an American President wishing to gain domestic support for substantial cuts in the military budget and a greater investment in economic and social programs at home and abroad, the United Nations represents a resource of enormous potential. It can help us to reorder our national priorities, to turn our country around."

"A U.N.-oriented foreign policy could give us a new sense of national purpose—an opportunity for recommitment to some fundamental principles of justice and human dignity which, at an earlier and happier stage in our existence, we perceived as essential elements of our behavior as a free people."

"Increasing numbers of Americans, particularly young Americans, are raising questions about the justice of our domestic and political order. At present these Americans are mainly looking inward. But a U.N.-oriented policy could help us put these concerns in a global context."

Professor Gardner conceded that there were "hard questions of feasibility" involved in his new foreign policy approach. But, he argued, "we will not know the limits of the possible until we really try." He called upon the President to put "the same kind of political effort behind U.N. peacekeeping and peacemaking proposals that was invested in the struggles for the ABM and the SST."

The Gardner monograph, entitled *The U.S. and the U.N.: Can We Do Better?* was originally written as background for an American Assembly which met last April at Arden House, Harriman, New York, to consider the current crisis in the U.N.

The American Assembly is a national educational organization in public affairs founded at Columbia by Dwight Eisenhower in 1950.

THE NATIONAL ENERGY CRISIS

Mr. BELLMON. Mr. President, the national fuels and energy study being conducted pursuant to Senate Resolution 45 under Interior and Insular Affairs Committee leadership has been making steady progress. Since its inception in mid-1971 we have held 31 days of hearings on 18 energy-related topics as a part of our study.

One of our most active members in the study has been the junior Senator from Wyoming (Mr. HANSEN). He has demonstrated not only an interest in the matter of our national energy crisis, but has also shown an in-depth knowledge of the subject equal to or superior to any member.

His sophisticated grasp of the issues and wisdom in perceiving solutions to the problem was recently revealed in a brilliant speech presented before a conference for corporation executives on the energy crisis, sponsored by the School of Advanced International Studies of the Johns Hopkins University. I highly commend it to the Senate as the most incisive analysis of our energy crisis I have ever seen. I request unanimous consent that Senator HANSEN's presentation be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

TALK BY SENATOR CLIFFORD P. HANSEN

I want to begin on an optimistic note. Optimism, I know, is as scarce a commodity these days as some of the fuels we have been hearing about. But I think it is worthwhile to state at the outset my belief that this nation can and will work out a set of coherent energy policies which will meet its needs for fuels that are abundant, secure, and environmentally acceptable.

I speak, of course, as a legislator committed to the belief that a democratic society can reach rational decisions which involve compromises among varied, and sometimes directly conflicting, interests. At the same time, I should add that I claim to be a realist as well as an optimist. As a realist, I would say that the United States does have an energy crisis, that it will get worse before it gets better, and that we have much to do if we are to achieve a coherent energy policy.

The nature and causes of the present crisis have already been spelled out for us in yesterday's session. Let me, however, summarize my own view of the crisis before indicating the steps I believe the U.S. government should take, first to mitigate its impact and then to develop both short and long-term solutions.

One serious consequence of our energy crisis is that we will be forced to rely on petroleum hydrocarbons to meet the bulk of our escalating energy needs well into the 1980's. A major difficulty flowing from such reliance is that a growing portion of our crude oil requirements will almost certainly have to come from foreign sources, particularly the Middle East.

These factors give rise to three major problems.

First, our overseas supplies may be interrupted. A resumption of intensified military hostilities in the Middle East could erupt at any time. Should such events occur we will be increasingly vulnerable particularly because our dependence on Middle Eastern crude is on the increase. The danger will be compounded because we have already lost most, if not all, of our cushion of spare U.S. producibility which formerly enabled us to survive crises—and even to supply our allies—in an emergency.

Second, even without a new military crisis or a politically motivated "cut off" of our supply of Middle Eastern crude, our projected dependence on foreign crude could result in a U.S. balance-of-payments deficit of serious proportions—an estimated \$25 billion in 1985.

Third, our status as a global power may be jeopardized in a world where the Soviet Union and Communist China will remain virtually self-sufficient in energy supplies while the United States moves closer to the unenviable position of Western Europe and Japan in becoming a have-not nation in terms of oil.

These are the major problems as I see them as related to the petroleum sector of our energy economy. Now let me suggest the measures that I believe should be taken to solve them.

First, the problem of supply interruption. I think this danger is real. Apart from the possibility of a Middle East flare-up, any one of the top five nations in the Organization of Petroleum Exporting Countries will soon be able to cause an oil shortage in the Western world by cutting off supplies, and any two will be able to cause a major crisis. Our major offshore supplier, Venezuela, belongs to OPEC.

In this situation, some form of security storage of oil stocks will become a necessity for the United States in the next few years. I believe we should consider a policy under which stocks of crude oil and petroleum

products equal, for example, to between 60 and 90 days of imports would be stored. These stocks would be located in the areas which are dependent on foreign supplies and therefore more vulnerable if overseas supplies are cut off. Obviously, such a program will be expensive and will face objections from people who like to use oil but do not want it as their neighbor. But it may well be essential to our national security. We may also wish to establish stand-by reserves of other energy sources, such as coal.

Associated with such planning should be a high priority reevaluation of contingency plans related to an emergency petroleum and petroleum product allocation system. We cannot afford to be caught defenseless should a cut off of Middle Eastern crude occur.

Second, the balance of payments problem. I see no way to avoid some increase in U.S. deficits from oil imports over the next decade, particularly in view of OPEC's demonstrated ability to obtain price increases, its as yet unresolved demand for participation in producing operations and its likely continuation of a hard line policy encouraged by its monopoly position of world crude oil supplies.

Nevertheless, I believe there is one way in which this deficit can be substantially reduced—through the construction of a large fleet of U.S.-flag tankers which would at least keep our oil transportation dollars within the United States. As you may know, I recently spoke out against a bill which would have mandated the use of U.S.-flag tankers to bring 50% of crude oil imports into the United States. This approach, I am convinced, is not the right way to go about the problem. It would not only be contrary to existing international agreements but would encourage other countries to retaliate in kind. Instead, I believe we can strengthen our security and balance-of-payments position by modifying the 1970 Merchant Marine Act to permit an expanded program of subsidized construction in U.S. shipyards. Vessels built under such a program would still have to be competitive with those of other nations in operating costs. At the same time, as I say, the dollars for their operation would stay in the U.S.

In this connection, I should add that the use of large tankers presupposes the existence of terminals to accommodate them. Largely due to environmentalist pressures, there are presently no deep-water terminals on the East Coast, where they are most needed. Instead the oil industry is being forced to consider building its deep-water terminals in Eastern Canada or the Bahamas, necessitating costly transshipping of oil to East Coast ports which will inevitably raise consumer prices, and causing yet a further drain on our balance of payments. I would hope that we in the Congress can find ways to encourage construction of deep-water facilities on the East Coast that will meet national needs. Such means should be designed and implemented following a specific assessment of need and national security requirements.

The situation is the same if we look at refinery capacity. Absolutely no new refineries are being built on the East Coast, where they are most needed. As a result, we are being faced with a number of disagreeable choices: export refinery capacity to Canada or the Bahamas, bring in foreign crude to Gulf Coast refineries for later transshipment of product up the East Coast, or actually import far more foreign products, besides residual fuel, than we do at present. We must ensure that suitable incentives are available to encourage the construction of additional East Coast refinery capacity and that we solve genuine environmental problems so that construction can proceed. If no steps are taken to correct the situation, we face the prospect of diminishing national security, added expense to the consumer, and mounting balance of payments outflows.

Let me now turn to my third point—the threat to this country's status as a world power resulting from increased dependence on foreign oil. This problem, of course, will only be solved when our nation is again in substantial control of its energy supply, and this may not happen again until after 1985, at the earliest. But there is much we can do, first to mitigate our dependence on foreign oil in the short-term, and second to lay the foundations now for a future viable energy position.

In the short term, we can take at least three steps:

We can begin construction of the trans-Alaska pipeline, which the Secretary of the Interior has approved on the basis of three years' exhaustive study;

We can decontrol the wellhead price of natural gas; and

We can intensify both offshore and on-shore drilling.

On natural gas, it is pleasant to note that we are at last making some headway. The Federal Power Commission's decision to ease price controls over sales of gas from newly discovered fields or extension of existing ones is to be welcomed.

At the same time, we shall not be able to reverse the decline in gas reserves, which followed the shortsighted 1954 Supreme Court decision that natural gas producers were subject to regulation, until the Natural Gas Act on which the decision was based is clarified. With six other Senators, I have introduced a bill which would end FPC regulation of well-head prices by amending the act so that it will very clearly not apply to these prices. This, I believe, is one major step in the right direction.

On offshore drilling, I would commend only that, according to the geologists, the Outer Continental Shelf is one of the greatest remaining sources of new petroleum deposits open to us, and offers the best and quickest hope for finding substantial new reserves. The Department of the Interior's draft environmental impact statement on the sale of offshore leases in the Gulf of Mexico makes a good case for offshore drilling, and I believe that the oil industry has gone a long way in meeting reasonable environmental criteria for offshore drilling off the Louisiana, Texas and California coasts.

There are three other fuel sources which must be developed for our long-term self-sufficiency, and on which we need to begin taking action now. I refer to shale, coal, and nuclear power.

Shale development is a course which I have consistently advocated. I introduced a bill into the Senate in 1968 calling for lease sales in Colorado, Utah, and my own state of Wyoming. In 1970, the Interior Department had completed a shale development plan, incorporating many features of my bill, under which lease sales would have started this year. No progress, of course, has been made in the development of oil from shale although, as I stated in my bill.

"The oil shale deposits located in the Green River formation of Colorado, Utah, and Wyoming contain the greatest known fossil fuel energy resource in the world and that this energy resource and associated minerals found in it are of vital importance to the future economic well-being and security of the United States."

Clearly, it is time for the Congress to consider oil shale development again and, in fact, the Senate Interior Committee has held hearings and the Development of Interior subsequently announced a new oil shale leasing program.

A recent draft environmental statement covers a proposal to make available for private oil shale development as many as six 5,120 acre leases on Federal lands in Colorado, Utah and Wyoming.

Coal is another major U.S. resource which could provide us with ample energy sup-

plies. But it failed to develop significantly in the Sixties for several reasons including over-optimistic nuclear forecasts, stringent safety regulations, and sulfur restrictions. In 1972, air-quality standards are still effectively barring large volumes of high-sulfur coal from the market, particularly from use in power plants which have turned to residual fuel oil. In the absence of economical stack gas control, it would therefore seem important that we exercise caution in setting sulfur-control standards. The expanded use of low-sulfur coal from the Western states is particularly a possibility if we are realistic about pollution levels.

Exploitation of coal reserves for conversion to liquid or gasified fuels will, of course, require the creation of a new large-scale industry, necessarily a long-term proposition. The Department of the Interior has, in fact, recently broken ground for a coal gasification pilot plant in Pennsylvania, and others are being funded by the American Gas Association and the Office of Coal Research.

These developments, obviously, should be encouraged. In particular, we in Congress can help a great deal by setting environmental standards, particularly for strip mining, which will insure that land is restored as far as possible to its former state after mining and will give the industry the go-ahead to continue operations with an assurance that it will not be hampered by continuing lawsuits.

Nuclear power, I believe, has an increasingly brighter future as we find improved solutions to the problems of thermal heating and the disposal of radioactive wastes. By 1985, nuclear power should supply as much as 35% of the consumption of our electric utilities and 13% of our primary energy supply for all purposes.

In this development, I believe Congress can play a major role by helping establish criteria for plant siting, atomic waste disposal, and safe handling of radioactive materials. Such criteria, while setting high standards of environmental protection, would speed nuclear plant construction by eliminating long-drawn-out lawsuits in which each case is decided independently.

I have sketched a mix of energy sources which should restore to us substantial control of our energy supply in the 1980's. In the meantime, our path will at best be difficult. Contrary to our previous experience, we shall not be able to serve as an energy backstop for Western Europe, but will more and more be in competition with Western Europe and Japan for available crude oil supplies. We will, however, share a common interest in promoting peace and stability in the Middle East, in encouraging the growth of new reserves in countries outside the Middle East, and in working together through such agencies as the Organization for Economic Cooperation and Development to coordinate our energy policies. Other options for improved consumer country cooperation also should be explored.

And I might amplify my ideas of the Federal role in speeding up U.S. recovery of energy independence. Consistent with our national security needs, I believe in the fullest possible play of free market forces in determining the price and end-use of any one of our energy resources.

Also, I favor the tax credit route including depletion allowance for all minerals over any Federal subsidy role.

If we mean what we say about speeding up domestic exploration and development then the Federal government should do everything possible to make it easier and less expensive for more companies and individuals to participate in that effort, especially on Federal lands both off and on shore.

I would suggest a leasing system which would more adequately stimulate offshore exploration efforts than the present OCS bonus bid system which requires such large cash investment for a hunting license. Ac-

tually, I believe, the Treasury would receive a greater aggregate of revenues in the long run from royalty payments resulting from increased oil and gas production under a revised leasing system than under continuation of the present bonus bid system.

And while the Office of Management and Budget is always on the hunt for instant and easy Treasury revenues, the priority now should be shifted to a balance between the need to realize an appropriate return on leased public resources and the need to stimulate increased exploration and development.

And in any Federal effort toward conservation of energy, I would favor higher consumer prices as a restraint on rapidly expanding demands which could concomitantly help improve the generation of capital. According to a recent financial analysis of the petroleum industry by Chase Manhattan Bank, the industry is not earning enough to generate sufficient capital to meet the nation's energy needs.

In my opinion, any punitive tax assessment for energy conservation or pollution control as proposed by some will be more costly to the consumer in the long run than higher product prices because such a tax mechanism fails to stimulate the generation of needed capital which in turn would result in even greater pressure to raise prices. Our nations energy consumers should not be burdened with the double cost of higher taxes and higher prices.

Further, even if such taxes were imposed and the federal government were compelled by law to allocate the resulting revenues toward expanded energy programs, I don't think there is any comparison as to the probable relative efficiency of government VS. industry in the effective expenditure of such funds. In other words, I am a strong believer in the carrot rather than the stick in Federal land and tax policies.

Although the program I have just outlined is far from comprehensive, I do believe it contains some of the essential fundamentals of a national energy policy. It is my hope that the implementation of many of these measures will be soon forthcoming. For, by definition the longer that necessary remedies remain unimplemented, the more intense our energy crisis becomes.

GOVERNMENT IN THE SUNSHINE

Mr. TUNNEY. Mr. President, a democratic form of government, such as ours, is a system which derives its authority from, and places its trust in, the people comprising this great Nation. As the people are sovereign, so are they empowered to obtain information regarding the operations and activities of their government. If an elected representative of the citizenry fails to respond to requests for information regarding matters of state, then the electorate may replace him. In the case of the Federal bureaucracy, those seeking documentary materials and records may petition for them under the Freedom of Information Act. Enacted in 1966, this statute provides the public with both an administrative procedure and court redress to obtain particular items from agency files.

But documentary accounts of governmental action are secondary sources of information for the citizenry. They constitute a record of what has transpired and while that statement of proceedings may be available to the public, the actual meeting might very well have been closed to all except those participating in the deliberations. To the end that many more meetings of executive branch

offices and congressional committees might be open to the public, I am proud to cosponsor, with Senator CHILES and other distinguished Senators, S. 3881.

GOVERNMENT IN THE SUNSHINE

In 1913 Supreme Court Justice Louis Brandeis wrote:

Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best disinfectant and electric light the most efficient policeman.

Thus, in the spirit of these words of the late Justice, the Florida Legislature passed an open hearing law in 1967 called the Government in the Sunshine Act. A member of the State senate at the time of the enactment of this legislation, Senator CHILES is now seeking to establish a similar guarantee of open meetings at the Federal level. In introducing his bill early last month he commented:

Since I came to the Senate last year, I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I have seen in our Federal Government agencies. I am not surprised that people are suspicious of our motives and are losing confidence in their government when they are shut out of the decision-making process.

I join with Senator CHILES in recognizing a mounting crisis of confidence and torment of secrecy in the public mind due to restrictions regarding the observation of governmental deliberations. In 1953 California pioneered the practice of mandatory open meetings with the passage of the Brown Act, which required public deliberations by all local government agencies. The State attorney general has ruled that this statute applies, as well, to legislative bodies of chartered cities.

The language of the Brown Act specifies that all public entities in California "exist to aid in the conduct of the people's business" and declares all meetings of a local legislative body or agency to be "open and public," with no conditions on attendance by the public and with provisions requiring fair notice of the time and place of such meetings, regardless of whether the session is extraordinary or not. There is evidence to indicate that practices now exist at the Federal level which warrant the enactment of legislation similar in scope and purpose to the Brown Act.

SECRECY AT THE FEDERAL LEVEL

One of the main thrusts of the Legislative Reorganization Act of 1970 was to bring committee proceedings under public scrutiny. The act indicated that Senate committee business meetings were to be open to the public, except during bill markup and voting sessions. It also provided that Senate committees could close their business meetings by a majority vote of the panel members. The Congressional Quarterly Service recently reported that:

Ninety-seven percent of those Senate committee meetings specifically designated in the daily digest as business session—organizing, marking-up, voting, briefing sessions—were closed to the public.

Like the Senate, the House of Representatives may also, by a majority vote of the members of a committee, close a

panel's business meetings. Excluding the meetings of the Appropriations Committee because subcommittee markup sessions were not reported in the CONGRESSIONAL RECORD, the Congressional Quarterly Service tabulations indicated that 79 percent of the House committee sessions listed as business deliberations were held behind closed doors.

The Congressional Quarterly Service reported that on the whole congressional committees held approximately one-third of their 1971 meetings in private.

Thirty-six percent of all congressional committee hearings and meetings were held behind closed doors in 1971. This marked a decrease from the 41 percent reported in 1970, but matched the secrecy score for 1969. The pattern of the past few Congresses has been to hold more open meetings in the first session than in the second.

In the Senate, one committee held 118 of 150 meetings—79 percent—in private; another closed 52 of 104 sessions—50 percent; a third met 55 of 127 times—43 percent—behind closed doors during 1971.

In the House, the Appropriations Committee had 36 of 455 meetings—8 percent—in public, a marked contrast to the record of the previous year when all of the panel's sessions were listed in the Daily Digest as closed. But another committee closed 69 of 111 meetings—62 percent—and a third held 70 of 150 sessions—47 percent—behind closed doors.

The question which these statistics raises concerns the propriety of holding so many sessions in secret. Certainly those committees considering matters of defense and foreign policy will find it necessary to hold executive sessions on occasion, but there must be some consideration; indeed, some statutory requirement that careful thought be given to the frequency of such sessions. Secret deliberations should occur as rare exceptions and even in those instances efforts should be made to release the meeting transcript as soon as possible.

While statistics on open and closed meetings within the executive branch are not available, there is evidence to indicate that opportunities for observing departmental and/or agency deliberations are few. The Administrative Conference of the United States, which has the responsibility for developing model administrative mechanisms and procedures, has offered two formal suggestions which, if adopted by the executive offices, would go far toward assuring public access to meetings. Conference Recommendation No. 1, adopted on December 10, 1968, urges the establishment of uniform and adequate physical facilities for "public and evidentiary hearings each year in cities throughout the country." The adoption and implementation of this proposal would circumvent the possibility of closed meetings to the public for lack of space to accommodate observers.

Recommendation No. 28 of the conference, which was adopted on December 6, 1971, calls for public participation in administrative hearings. "The recommendation encourages agencies to allow persons whose interest or views are relevant

and not otherwise represented to participate in administrative proceedings." The term "participate," as expressed in this proposal, could be read to include observation of the proceedings. The provisions S. 3881 would, however, guarantee the opportunity to gain entry to such meetings and to do so without any requirement of establishing just cause to observe.

During the course of omnibus hearings this year on U.S. Government information policies and practices, the House Foreign Operations and Government Information Subcommittee heard testimony on advisory committee meeting practices. In a study of 1,940 separate and distinct advisory committee meetings and hearings held by 68 different departments and agencies, 996 meetings—51 percent—were open to the public. However, "although many of the advisory committees hold open meetings, they indicated no procedure for notification to the public of these meetings. If the public is not informed of an open meeting, the meeting is for all practical purposes 'closed.'"

In this particular study of executive branch advisory committees, not only were the meetings generally held in secret, but records on the sessions were sorely lacking. It was reported that only 31 percent of the surveyed meetings were held with transcripts prepared. However, of the 1,940 gatherings studied, in only 26 percent of the cases was a transcript available to the public. In 71 percent of the cases minutes were prepared but these accounts were of uneven quality as records of transpired events.

In only 41 percent of the total number of cases were the minutes available for public scrutiny. It was also discovered that in only 8 percent of the cases studied were final votes of the advisory committee members recorded and made public as required by the Freedom of Information Act [5 U.S.C. 552(a)(4)]. As those conducting the study of the advisory committees concluded:

In the day-to-day operations of the close to 2,000 advisory committee meetings and hearings, the agencies have either misinterpreted or chosen to ignore existing statutes enacted to provide the public with greater access to information. The agencies have failed to adequately document their procedures, findings, and conclusions.

There appears to be, if not a deliberate attempt to restrict disseminating information, no concentrated effort on the part of the agencies to insure public participation in their activities. This is evident from the lack of adequate procedures to inform the public of these meetings, and the closing of many of these meetings.

Indeed, the attitudes which prevailed among these committees with regard to closed sessions was that in the absence of any requirement that their deliberations be open, the sessions would be held in secret.

It is, of course, difficult to determine to what extent these advisory committees reflect the behavior of the bureaucracy as a whole in terms of open or closed meetings. It should be noted, however, that these units are an extension of the departments and agencies which they serve, and it must be observed that their parent bodies have apparently

done nothing to discourage such secrecy or to encourage open deliberations. Some will also recall that no unit of the Executive went on record in support of the Freedom of Information Act when it was under discussion. A secretive Congress may not long be tolerated by the electorate, but what recourse has the citizen against the secrecy of the bureaucracy?

CONTROLLING EXCESSIVE SECRECY

S. 3881, is a responsible and necessary attempt to make secrecy in government the exception rather than the rule. Neither the Congress nor the executive branch should regard secrecy as part of the normal policymaking or administrative process. If closed deliberations are to be tolerated, the subject matter of such sessions must be specific and of a privileged nature. Similarly, like the Freedom of Information Act, S. 3881, sets forth specific exemptions to the mandatory open meeting rule. Excepted from the general requirement of public sessions are discussions involving national security, the internal management of an agency, matters which might tend to reflect adversely on the character or reputation of an individual who is subject to any proposed or potential sanction by an agency, or matters which are required by specific statutory authority to be kept confidential. Such provisions safeguard the security of the Nation, the rights of individuals, and the sanctity of law.

It should be noted as well that this legislation not only "does not authorize closed meetings or the withholding of information from the public except as specifically stated" but also "is not authority to withhold information from Congress." Indeed, it is not the intention of this bill to impede the flow of information from the executive branch to the Congress, but to encourage the transmittal of data.

Careful provision is made that full transcripts of both executive branch and congressional deliberations be promptly made available for public inspection and copying. This provision would supercede the authority of the Clerk of the House to withhold any records of the House of Representatives which might exist only in transcript form or which are less than 50 years old and have not yet been made public, unless such records might be exempted under the provisions of this legislation.

It also supersedes any authority which the Administrator of the General Services Administration might have to withhold such House records as are in his possession unless they fall within the exemption of the legislation. Such authority was originally granted to the Clerk of the House and the Administrator of General Services by House Resolution 288.

Actions contrary to the provisions of this legislation may be challenged in the district courts of the United States. Such disputes may be resolved by declaratory judgments or injunctions.

Without reservation, I join the Senator from Florida in urging the passage of S. 3881. Secrecy in government can be tolerated only if the representatives of the people have the mandate and the

trust of the public for accomplishing behind closed doors that which can be resolved in no other way. Excessive secrecy is anathema to both the democratic system of government and the concept of popular sovereignty. If we are truly a government for, of, and by the people, then the business of state must be conducted before the eyes of the citizenry. Governmental deliberations must be open to observation, must be recorded thoroughly and accurately, and must be available to succeeding generations in such documentary form. As these are the intentions of this legislation, so I urge its enactment.

THE 25TH ANNIVERSARY OF TEMPLE ISAIAH, WEST LOS ANGELES, CALIF.

Mr. TUNNEY. Mr. President, I congratulate Temple Isaiah, of West Los Angeles, Calif., on its 25th anniversary, October 20, 1972.

Because the Senate will soon recess, I am several weeks premature in making this statement. But the tribute is well-deserved, and it is better to make it early so that I may advise my colleagues of the accomplishments of Temple Isaiah.

In its quarter century, Mr. President, Temple Isaiah has fashioned an impressive record and reputation. The Temple has, since its inception, consistently adhered to an "open door policy," conforming to the highest ideals in Judaism, which welcomes and assists the stranger regardless of race, creed, color, or social status. It has taken dynamic and appropriate social action in the struggle for civil rights on behalf of the underprivileged, and it has actively participated in programs of ecumenism, promoting the spirit of brotherhood among all creeds on behalf of the general welfare of the community.

Under the auspices of Temple Isaiah and at the instigation of its leader, Rabbi Albert M. Lewis, the Robert J. Green Contact Center was established for the treatment of emotionally disturbed youth and the elderly in the community without regard to race, creed, or color. I understand that Temple Isaiah has evolved an impressive and creative, experimental religious education program known as "Rishonim," a corps of young parateachers who teach the adolescent and foster a "living Judaism," integrating the highest ethical precepts of their religion into the daily life style of hundreds of young people.

Temple Isaiah has been in the forefront of two international social struggles which are urgent, not only to the Jewish people of this country, but to all of us who believe in human dignity and individual rights.

First, the temple has consistently supported the State of Israel and made substantial contributions to the welfare of its people. Secondly, Temple Isaiah has taken action in giving moral encouragement and keeping alive the hopes of freedom-loving Jews of Russia who wish to leave that country in order to practice their religion, and its members and clergy have attempted to expedite their exodus from totalitarian restrictions and oppression.

Accordingly, Mr. President, I believe that no one in this body will disagree that Temple Isaiah deserves our commendation and respect. To Rabbi Albert M. Lewis, to the temple officers and members, I extend congratulations on this occasion and best wishes for an equally successful future.

SURVEILLANCE IN A FREE SOCIETY

Mr. BROCK. Mr. President, the role of internal surveillance of citizens in a free society is dubious from the outset. In certain special circumstances, and then only under adequate judicial and due process safeguards, limited intelligence-gathering activities may be justified. However, each authorized incursion on an individual's right to privacy takes us deeper into that dangerous gray area where the objective of surveillance must be measured against our most treasured rights as individuals.

Such a determination of merit clearly enters the murky realm of how far any government can go in information collection before it emerges as a totalitarian state, and I say, not far at all—without the risk exceeding any possible benefit. Intelligence activities within the U.S. military have increased dramatically in the recent past—increased in my opinion beyond the danger point.

In a democracy, official data-gathering of personal information should be the exception rather than the rule. Federal investigations of recent activities lead one to the unmistakable conclusion that past administrations have far exceeded the prudent and judicious course in exercising surveillance authority. Reports indicate that intelligence officials had accumulated a massive amount of material on private citizens, much of which is in no way related to the security or defense of this country. In December, 1970, it was estimated that Army intelligence had reasonably current files on the political activities of at least 100,000 citizens unaffiliated with the Armed Forces. This was the understatement of the year. Incredibly, more recent information reveals dossiers on millions of our citizens, much of which information was based upon nothing more than hearsay.

Mr. President, for whatever intention, statist paranoia, technological innovation in information retrieval, bureaucratic "do something" psychology, or simply excessive zeal, such actions threaten the most basic freedoms guaranteed by democracy.

As representatives of the rights of free citizens, Congress must act to prevent further abuse of Government authority.

Mr. President, I commend the distinguished Senator from North Carolina (Mr. ERVIN) on his attempt to air this issue. I ask unanimous consent that an editorial entitled "Unlawful Job, Poorly Done," published in the Chattanooga Times, be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

UNLAWFUL JOB, POORLY DONE

In recent years, Army Intelligence officers have accumulated data on civilians who by

no stretch of the imagination could be considered proper subjects for military investigation. The extent to which these snooping operations were carried out is just now being revealed by a Senate committee probe.

It is alarming, even though the military categorically asserts the program has ended, not only because unwarranted dossiers were compiled but also because there is no assurance the files have been destroyed.

Sen. Sam Ervin, D-N.C., chairman of the judiciary sub-committee handling the inquiry, writes in its report that both civilian and central military control over the surveillance activities was completely nonexistent.

The committee expressed surprise, if not dismay, at the sheer volume of raw intelligence data that had been gathered. One Army headquarters unit in Texas had 190 linear feet of dossiers and file cards dealing with individuals and organization, and it was only one of 350 such record centers.

The most damning commentary was contained in the committee's notation that the collection of the data was occasionally defended on the grounds of necessity. It added:

"Yet it appears that the vacuum cleaner approach of collecting all possible information resulted in great masses of data on individuals which was valuable for no legitimate (or even illegitimate) military purposes."

"These vast collections of fragmentary, incorrect, and irrelevant information—composed of vague conclusions and judgments and of overly detailed descriptions of insignificant facts—could not be considered 'intelligence' by any sense of the word."

It was a job done poorly; worse, it was one which was outside the military's purview and contrary to Americans' understanding of inviolable rights of individuals.

FUNDS NEEDED FOR MARCH AIR FORCE BASE, RIVERDALE, CALIF.

Mr. TUNNEY. Mr. President, the House Appropriations Committee has just reported the fiscal year 1973 military construction bill. I am very deeply disturbed about projects which have been excluded by the Committee.

March Air Force Base, in Riverdale, Calif., has been in desperate need of improvements for many years. This year, the military construction authorization bill included \$4.5 million for additional

facilities to be built for the March AFB Hospital. The present outpatient facility serves approximately 75,000 military personnel and their dependents, in addition to an estimated 40,000–50,000 retired personnel in its service area. Additional hospital space is a critical requirement which can only be satisfied by the addition of a new wing to the present building.

The reason given for the denial of these funds in that report is that the future of many Air Force bases is suspect. Thus the committee deleted operational or maintenance projects for which there is no guarantee of timely or long-term usage, or which do not result in significant savings or benefits. Yet the Department of Defense has informed me that they have no plans to close March, and additionally that they do not favor the action taken by the committee.

Mr. President, it appears that the House Appropriations Committee is taking upon itself the determination of which military facilities may be shut down in the future. I do not consider this policy to be a wise one. The Department of Defense should be contacted for their views on issues such as this, just as the Congress should be consulted before major policy decisions affecting foreign policy are made by the executive department. On this particular issue of March AFB, the Air Force has assured me that they are not envisioning taking the action implied by the House Appropriations Committee. And yet badly needed improvements are being denied to March and other bases through the country, on the evaluation of the House Appropriations Committee only.

I have again written to Senator MANSFIELD and additionally to Senator McCLELLAN, urging them to reverse the House action on March AFB Hospital. I am prepared to fight for reinstatement of the funds on the Senate floor, if this proves to be necessary. I sincerely hope that it will not. But I wanted to bring to the attention of this body the general action of the House Appropriations Committee, as the underlying implications are indeed disquieting.

SURVEY BY SOUTHWEST BEHAVIORAL INSTITUTE, FLAGSTAFF, ARIZ.

Mr. FANNIN. Mr. President, during the spring and summer of 1971, the Southwest Behavioral Institute, located in Flagstaff, Ariz., conducted a survey of Navajo and Hopi parents who had children attending either public, private, or BIA elementary and secondary schools on the Navajo and Hopi Reservations and, in particular, the Window Rock School District at Fort Defiance, Ariz.

To insure the success of this survey, a number of important steps were taken. First, throughout the survey area, various Indian groups were asked to recommend Indian people to administer the questionnaire. Second, a number of meetings were held with Indian groups to determine what areas of interest and concern should be included in the questionnaire itself.

The interviews were conducted in the homes of the parents, who were chosen at random and represented approximately 10 percent of the parents in the area surveyed.

The primary purpose of this survey was to:

First. Determine what parents desired of public education on the reservation.

Second. Identify the significant values of the parents as they relate to education.

Third. Modify and strengthen the school program in a manner consistent with the research findings.

The results of this survey have confirmed many of our notions concerning Indian education and have raised some doubts about others. These results have important implications for future policy direction in the administration of Federal Indian education endeavors and, therefore, should be reviewed by Congress.

Mr. President, I ask unanimous consent that the results of this survey be printed in the RECORD.

There being no objection, the survey was ordered to be printed in the RECORD, as follows:

	Total reservation—520 interviews						Window Rock District—91 interviews					
	No answer		Yes		No		No answer		Yes		No	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1. Do you know your child's teacher?	8	1.5	236	45.4	276	53.1	1	1.1	52	57.1	38	41.8
2. Would you want to know your child's teacher better?	11	2.1	466	89.6	43	8.3	2	2.2	79	86.8	10	11.0
3. Has the teacher ever visited you at home?	8	1.5	81	15.6	431	82.9	1	1.1	7	7.7	83	91.2
4. Would (or did) you like the teacher to visit your home?	17	3.3	446	85.8	57	11.0	1	1.1	70	76.9	20	22.0
5. Have you ever visited your child's classroom?	8	1.5	239	46.0	273	52.5	1	1.1	41	45.1	49	53.8
6. Would you like to visit your child's classroom (again)?	31	6.0	439	84.4	50	9.6	5	5.5	73	80.2	13	14.3
7. Does the teacher do a good job of teaching?	49	9.4	448	86.2	23	4.4	3	3.3	81	89.0	7	7.7
8. Is the teacher interested in the tribe and its culture?	154	29.6	326	62.7	40	7.7	15	16.5	70	76.9	6	6.6
9. Does the child's teacher speak Navajo/Hopi?	65	12.5	86	16.5	369	71.0	6	6.6	14	15.4	71	78.0
10. Do you think the teacher should speak Navajo/Hopi?	49	9.4	253	48.7	218	41.9	5	5.5	41	45.1	45	49.5
11. Who do you think would make the best teacher for your child? (Yes—Indian) (no—other)	170	32.7	103	19.8	247	47.5	34	37.4	22	24.2	35	38.5
12. Do teachers grade your child at school?	17	3.3	495	95.2	8	1.5	3	3.3	88	96.7	3	3.3
13. If yes, do you think the grades help your child learn?	25	4.8	475	91.3	20	3.8	2	2.2	84	92.3	5	5.5
14. Should children be given a failing grade if they don't study?	23	4.4	415	79.8	82	15.8	3	3.3	81	89.0	7	7.7
15. Does the teacher treat your child fairly?	38	7.3	452	86.9	30	5.8	5	5.5	81	89.0	5	5.5
16. Should the teacher have a college degree?	26	5.0	473	91.0	21	4.0	2	2.2	87	95.6	2	2.2
17. Would you want your child to become a teacher?	63	12.1	422	81.2	35	6.7	13	14.3	72	79.1	6	6.6
18. Does the school teach the Navajo/Hopi way of life?	100	19.2	140	26.9	280	53.8	10	11.0	19	20.9	62	68.1
19. Do you want them to?	35	6.7	386	74.2	99	19.0	8	8.8	56	61.5	27	29.7
20. Does the school teach your child Navajo/Hopi religion?	55	10.6	80	15.4	385	74.0	9	9.9	9	9.9	73	80.2
21. Would you like them to?	38	7.3	266	51.2	216	41.5	10	11.0	27	29.7	54	59.3
22. Do you want a local medicine man to be employed by the school to teach religion?	48	9.2	191	36.7	281	54.0	5	5.5	16	17.6	70	76.9

	Total reservation—520 interviews						Window Rock District—91 interviews					
	No answer		Yes		No		No answer		Yes		No	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
23. Does the school teach your child about Navajo/Hopi history?	55	10.6	264	50.8	201	38.7	7	7.7	56	61.5	28	30.8
24. Do you think they should?	21	4.0	454	87.3	45	8.7	2	2.2	80	87.9	9	9.9
25. Do you think school has taught your child to be ashamed of his past?	31	6.0	97	18.7	392	75.4	5	5.5	13	14.3	73	80.2
26. Do you want the school to teach your child to read and write the Navajo/Hopi language?	19	3.7	417	80.2	84	16.2	3	3.3	63	69.2	25	27.5
27. Does your child speak Navajo/Hopi at home?	12	2.3	381	73.3	127	24.4	7	7.7	56	61.5	28	30.8
28. If no, do you feel badly about your child not speaking Navajo/Hopi at home?	398	76.5	23	4.4	99	19.0	62	68.1	5	5.5	24	26.4
29. Do you think the school discourages your child from speaking Navajo/Hopi at home?	47	9.0	59	11.3	414	79.6	7	7.7	10	11.0	74	81.3
30. Do you want the schools to teach science to your child?	7	1.3	475	91.3	38	7.3	3	3.3	87	95.6	1	1.1
31. Do you want the schools to teach your child some vocational trade?	7	1.3	493	94.8	20	3.8	1	1.1	86	94.5	4	4.4
32. At what grade should this begin?	47	9.0					7	7.7				
No answer	91	17.5					10	11.0				
Grades 1-6	285	54.7					55	60.5				
Grades 7-9	97	18.7					19	20.8				
Grades 10-12	35	6.7	408	78.5	77	14.8	2	2.2	78	85.7	11	12.1
33. Does the school teach arts and crafts?	16	3.1	459	88.3	45	8.7	3	3.3	78	85.7	10	11.0
34. Would you like the school to teach it more?	27	5.2	444	85.4	49	9.4	3	3.3	80	87.9	8	8.8
35. Does the school teach your child to behave properly?												
36. If no, in what ways does your child misbehave? (Results in pt. II of final report.)	34	6.5	148	28.5	338	65.0	4	4.4	22	24.2	65	71.4
37. Does the school ever punish (or spank) your child?	43	8.3	323	62.1	154	29.6	7	7.7	35	38.5	49	53.8
38. Do you think they should?	41	7.9	176	33.8	303	58.3	4	4.4	20	22.0	67	73.6
39. Do you think the school is too easy on the child and lets him misbehave?	20	3.8	404	77.7	96	18.5	6	6.6	69	75.8	16	17.6
40. Does the school get your permission for your child to participate in extra-curricular activities?	18	3.5	473	91.0	29	5.6	5	5.5	79	86.8	7	7.7
41. Should they?	50	9.6	319	61.3	151	29.0	5	5.5	54	59.3	32	35.2
42. Do you approve of weekend and after school social functions such as dances, parties, and field trips?	39	7.5	157	30.2	324	62.3	7	7.7	25	27.5	59	64.8
43. Do you think the school has too many such activities?	53	10.2	380	73.1	87	16.7	8	8.8	69	75.8	14	15.4
44. Is the yellow bus system adequate?												
45. If no, in what way? (Results in pt. II of final report.)	63	12.1	411	79.0	46	8.8	9	9.9	72	79.1	10	11.0
46. Is the bus safe?	20	3.8	426	81.9	74	14.2	2	2.2	83	91.2	6	6.6
47. Is the school lunch program adequate?												
48. If no, in what way? (Results in pt. II of final report.)	4	.8	509	97.9	7	1.3	3	3.3	87	95.6	1	1.1
49. Do you think your child should have to attend school every day?	28	5.4	129	24.8	363	69.8	5	5.5	32	35.2	54	59.3
50. Should your child be suspended from school after he misses over 5 days?	6	1.2	140	26.9	374	71.9	2	2.2	31	34.1	58	63.7
51. If no, what should the school do after 5 misses? (Results in pt. II of final report.)	216	41.5	148	28.5	156	30.0	24	26.4	40	44.0	27	29.7
52. Has the attendance officer ever visited your home?												
53. Was he helpful?	28	5.4	160	30.8	332	63.8	3	3.3	31	34.1	57	62.6
54. If no, why not? (Results in pt. II of final report.)	12	2.3	196	37.7	312	60.0	1	1.1	44	48.4	46	50.5
55. Is it any easier for you around the house when your child stays home from school?	29	5.6	372	71.5	119	22.9	4	4.4	57	62.6	30	33.0
56. Do you let your child choose the school he wants to attend?	31	6.0	333	64.0	156	30.0	6	6.6	58	63.7	27	29.7
57. Do you think school should prepare your child to live on the reservation	10	1.9	501	96.3	9	1.7	1	1.1	88	96.7	2	2.2
58. Should the schools prepare him to live off the reservation	296	56.9	224	43.1			64	70.3	27	29.7		
59. Do you want your child to go beyond high school	96	18.5	424	81.5			12	13.2	79	86.8		
60. What type of school? (Yes=vocational school—2-year)	32	6.2	287	55.2	201	38.7	3	3.3	46	50.5	42	46.2
61. Would you want your child to attend an all-Indian college												
62. Do BIA schools prepare children for college better than public schools	115	22.1	70	13.5	335	64.4	22	24.2	13	14.3	56	61.5
63. If yes, why? (Results in pt. II of final report.)	55	10.6	434	83.5	31	6.0	3	3.3	85	93.4	3	3.3
64. Does your school have a school board	328	63.1	188	36.2	4	.8	63	69.2	28	30.8		
65. If not, should it have a school board	89	17.1	384	73.8	47	9.0	5	5.5	79	86.8	7	7.7
66. Does the school board control the school												
67. If no, who does? (Results in pt. II of final report.)	58	11.2	244	46.9	218	41.9	11	12.1	46	50.5	34	37.4
68. Do you think that non-Indians run the school	190	36.5	178	34.2	152	29.2	27	29.7	43	47.3	21	23.1
69. If yes, should they	15	2.9	156	30.0	349	67.1	1	1.1	31	34.1	59	64.8
70. Have you ever talked with a school board member												
71. If not, why not? (Results in pt. II of final report.)	122	23.5	300	57.7	98	18.8	12	13.2	49	53.8	30	33.0
72. Do you think they are interested in your ideas and opinions?												
73. If no, why not? (Results in pt. II of final report.)												
74. Where does the school board get the money to run the school? (Results in pt. II of final report.)												
75. Does the school board publish how they spend the school money?	65	12.5	108	20.8	347	66.7	10	11.0	41	45.1	40	44.0
76. Should they publish this?	42	8.1	462	88.8	16	3.1	8	8.8	79	86.8	4	4.4
77. Do you pay for your child's education?	24	4.6	124	23.8	372	71.5	5	5.5	17	18.7	69	75.8
78. Are all the school board members Navajo/Hopi?	98	18.8	71	13.7	351	67.5	7	7.7	5	5.5	79	86.8
79. Should they be?	63	12.1	170	32.7	287	55.2	7	7.7	30	33.0	54	59.3
80. Does the tribe control what goes on at the school?	101	19.4	160	30.8	259	49.8	11	12.1	32	35.2	48	52.7
81. Should the tribe control the schools?	59	11.3	253	48.7	208	40.0	7	7.7	35	38.5	49	53.8
82. Is your school administrator a Navajo/Hopi?	64	12.3	112	21.5	344	66.2	2	2.2	4	4.4	85	93.4
83. Should he be a Navajo/Hopi?	76	14.6	266	51.2	178	34.2	10	11.0	36	39.6	45	49.5
84. Who is the superintendent of your school? (Yes=name given)	204	39.2	316	60.8			9	9.9	82	90.1		
85. Have you ever attended a PTA meeting?	20	3.8	95	18.3	405	77.9	2	2.2	25	27.5	64	70.3
86. If no, why not? (Results in pt. II of final report.)												
87. Do you attend school activities such as sporting events, etc.?	12	2.3	244	46.9	264	50.8	2	2.2	44	48.4	45	49.5
88. Would you like to participate more?	33	6.3	274	52.7	213	41.0	5	5.5	38	41.8	48	52.7
89. If yes, why don't you? (Results in pt. II of final report.)												
90. Does your child help interpret English for you?	17	3.3	270	51.9	233	44.8	3	3.3	47	51.6	41	45.1
91. Would you like to be able to speak English better?	21	4.0	451	86.7	8	9.2	3	3.3	78	85.7	10	11.0
92. Do you feel you are the last to know what's going on at the school?	27	5.2	273	52.5	220	42.3	4	4.4	24	26.4	63	69.2
93. Do you think education makes students think they are better than other people?	48	9.2	190	36.5	282	54.2	9	9.9	39	42.9	43	47.3
94. Do you need your children to take care of you when you are old?	36	6.9	376	72.3	108	20.8	5	5.5	64	70.3	22	24.2
95. All in all, do you think your child is attending one of the better schools on the reservation?	35	6.7	447	86.0	38	7.3	2	2.2	82	90.1	7	7.7
96. If no, what changes need to be made to make it better? (Results in pt. II of final report.)												

97. Of the following, which school is best for your child?

BIA
LDS
Public
BIA Bordertown
Mission
No answer
Other

Number	Percent	Number	Percent
45	8.7	5	5.5
12	2.3	1	1.1
288	55.4	55	60.4
11	2.1	3	3.3
42	8.1	2	2.2
119	22.9		
3	.6	3	3.3

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that morning business again be closed.

The PRESIDING OFFICER. Without objection, morning business is again concluded.

FOREIGN ASSISTANCE ACT OF 1972

The PRESIDING OFFICER (Mr. STEVENSON). Under the previous order, the Senate will resume the consideration of H.R. 16029, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 16029) to amend the Foreign Assistance Act of 1961, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARTKE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. ALLEN). The amendment will be stated. The legislative clerk read as follows:

On page 17, line 25, strike out the quotation marks.

On page 17, after line 25, add the following: "(z) No assistance shall be furnished under this Act (other than chapter 8 of part I, relating to international narcotics control), and no sales shall be made under the Foreign Military Sales Act or under title I of the Agricultural Trade Development and Assistance Act of 1954, to Thailand. This restriction may be waived when the President determines that the government of Thailand has taken adequate steps to carry out the purposes of chapter 8 of part I of this Act, relating to international narcotics control."

Mr. HARTKE. Mr. President, the amendment which I have sent to the desk concerns a problem which is of increasing importance to the United States of America and all of its citizens. It was emphasized on September 18 of this year when the White House issued a statement to the International Narcotics Control Conference. At that time he emphasized the difficult problem that is confronting the United States concerning the question of drug control. He said at that time:

As we all know, the global drug control program is enormously difficult and does not lend itself to immediate or simplistic solution. Nevertheless, looking back over the three years since I declared total war on drug abuse and labeled it America's public enemy number one, I think the depth of our national commitment is clear.

The President further states he will not hesitate to act against those countries and their leaders who are involved in supplying narcotics to the United States. Mr. Nixon also stressed that France, Paraguay, Laos, Thailand, and Turkey are a few examples where the work of American officials from Ambassadors on down in partnership with law officials produced important breakthroughs. As I will elaborate later serious questions have been raised concerning the scope of those breakthroughs.

Mr. President, I call upon the Senate to adopt my amendment which provides for the suspension of all military and economic aid to Thailand unless it is proved that the Thai Government has taken adequate steps to carry out the purposes of chapter 8 of part 1 of the Foreign Assistance Act.

Mr. President, the Veterans' Administration has demonstrated conclusively to the Committee on Veterans' Affairs, of which I am the chairman, that the drug problem has seriously affected veterans. It was reported that some 75,000 veterans a year out of approximately 1 million are addicted to narcotics. When this report was issued the Director of the Veterans' Administration, stated that the report was an exaggeration and that there were less than 50,000 military personnel a year returning from Vietnam who are heroin addicts. This means that in the very least in the next 5 years there will be a quarter of a million heroin and narcotic addicts who have returned from Southeast Asia. This is just one of the many reasons why I advocate affirmative action to end the heroin traffic in Southeast Asia.

The Hartke amendment is identical to a proposal introduced by Representative WOLFF of New York and cosponsored by 85 Members of the other body. It was adopted by the House and is incorporated in section 7 of the House-passed version of H.R. 16029, the bill now pending before the Senate.

This support clearly indicates a commitment on the part of many legislators to act against the increasing traffic in heroin which is originating in Southeast Asia. Nevertheless, there have been few inroads in limiting the massive drug traffic in that part of the world.

I approve the President's recent statement in which he warned that he would suspend all economic and military assist-

ance to regimes failing to cooperate with efforts by the United States to end once and for all this monstrous evil. But the fact is, the Nixon administration has failed to use the power Congress gave for that purpose. I refer to section 481 of the Foreign Assistance Act which gives the President sole discretion to make a determination that the Government has failed to take adequate steps to suppress dangerous drugs. The President alone decides what shall constitute "adequate steps" and he need justify his decision to no one.

We have previously argued on the floor of the Senate that section 481 was, in and of itself, sufficient authority to do what needed to be done. In other words, it was argued that the President has this authority. However, we are presently faced with a paradoxical situation which seems to be the trademark of this administration. On the one hand they are calling for the action which my amendment proposes to implement, yet we have seen little affirmative action.

The Hartke amendment would modify present law to provide that aid to Thailand be terminated until the President makes a definitive finding that Thailand has taken the necessary steps to comply with chapter 8 of the Foreign Assistance Act relating to international narcotics control.

My amendment rather than being of a substantive nature is a procedural amendment which shifts the burden of proof to the administration to make a positive finding that the necessary steps have been taken to suppress the narcotics trade.

It can be argued, and I think the chairman of the Committee on Foreign Relations would argue, that the President has this authority and could so act at the present time. But we are a coequal branch of Government, and in view of the fact that there is hard evidence that the Thai Government has not acted substantively to end the narcotics traffic then it is incumbent upon this body to act.

Mr. President, I am of the opinion that the Senate can not stand idly by in the face of the evidence before us. The failure of the President to act means we have a continuation of a serious drug problem.

No action has been taken by President Nixon in spite of the evidence that Thailand serves as the major conduit for the transshipment of opium produced in Southeast Asia.

Let us look briefly at the situation in Thailand. Several congressional study missions have returned to the Congress with reports that Thailand serves as the major conduit for drug traffic in the Southeast Asia region. As a result of

these investigations, we have learned that opium-bearing caravans continually bring substantial amounts of raw opium and some refined morphine derivative down to Bangkok for shipment to Hong Kong. An NBC television camera crew photographed such a caravan within the past 6 months.

After the opium reaches the port of Bangkok, it is placed aboard Thai-registered fishing trawlers. These trawlers can carry about 3.3 tons of opium per voyage. Until last year, these trawlers operated only during the summer months. Currently, they carry their deadly cargo year round. There is enough opium on each ship to supply 6 percent of the annual U.S. demand for heroin.

From Bangkok, the 11-trawler fleet sails to Hong Kong where they unload the opium onto junks in Chinese Communist waters. These junks are then able to slip into Hong Kong unmonitored. The opium is then refined and shipped to the United States. This has come to be known as the "Thai connection."

I am informed that American intelligence and narcotics personnel are aware of high-level official complicity in the Thai drug trade. Not only do our people have the names of those involved, but they also have positive identification of the Thai trawlers which carry the opium to Hong Kong.

Our military action in Southeast Asia might be more appropriately directed toward some of those Thai trawlers rather than our present targets.

We have been told repeatedly that the Thai Government is cooperating in our efforts to stem the drug traffic. It is shocking that with this so-called cooperation of the Thai Government and its security personnel resulted in the seizure of only 97 pounds of heroin and 645 pounds of opium during all of 1971.

Other serious questions have been raised concerning the degree of Thai cooperation. For example, last March the Thai Government announced it had burned 26 tons of opium. This was hailed as evidence that Thailand was "cooperating" in efforts to stop the flow of heroin. Yet, no official statement or press release mentioned the fact that about \$1 million of American funds were involved in this so-called seizure.

If the United States did buy up opium and assure its destruction, the action might be defended. But according to the Bureau of Narcotics and Dangerous Drugs, all we did was inspect part of it before it was burned. Meanwhile, it was the Thais who collected it, tested it at the time of collection, and ultimately destroyed it.

The matter of heroin and Thailand is not a new problem. It was not discovered yesterday, although some administration officials act as if it was. Nelson Gross of the State Department testified on June 9 that—

We have no evidence that there is any present heroin refinery working in either Laos or Thailand in the northern area or in the area of Bangkok in the south.

Three days after he made that statement, completely acting as though nothing

was going on, the State Department issued a report detailing the seizure of such refineries in the very areas where Gross said none existed. The problem has been there and no one will benefit by trying to cover it up.

Mr. President, I am deeply troubled that our Government seems to be satisfied with telling the people that progress is being made, when it is not, and that not enough of an effort is being made to achieve progress in our antidrug efforts.

Such efforts to hide the truth from the American public on the critical issue of heroin traffic are highly undesirable and counterproductive.

It is time to make drug information available to the public and to put the necessary pressure on the Thai Government to take definitive action against drug smuggling. Only by the kind of direct action which the Hartke amendment proposes will we serve notice, not only to Thailand, but to other nations of the world as well, that halting the flow of heroin into this country is our No. 1 priority.

Last week, President Nixon said that he considers keeping dangerous drugs out of the United States just as important as keeping armed enemy forces from landing in the United States. I agree. That is the reason why I introduced the pending Hartke amendment, in order to force the Nixon administration to end all aid to Thailand, making it a congressional mandate.

The administration can, under the amendment, resume aid, but first it must prove to the Congress that Thailand has indeed taken all necessary measures to end this deadly traffic—no such proof now exists.

We must act now to end the widespread suffering which heroin addiction causes in our society, both for the user and the victims of drug-related crimes. We must cut off the supply at its source.

The way to do it is to adopt the amendment which is before the Senate at this time.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHILES). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FULBRIGHT. Mr. President, this amendment was, of course, offered to the Senate before and was defeated in the Senate by a vote of 68 to 22. The law already has a provision which is a little different from this amendment in the burden of proof, in that the matter is pretty much left up to the President, whereas in this case aid is suspended unless the President makes a positive finding. There is a shift in the burden.

The difficulty is that the law as it stands applies to all countries, whereas this amendment is applicable only to Thailand. I have no objection to apply-

ing it to Thailand, but I think it should be made applicable to Laos, Vietnam, and Burma, for example.

I might also say that this amendment is in the House bill, and if we go to conference it will be in conference. If we put it in the bill here, it will not be in conference. I think if we were to have this type of provision, it should be made generally applicable to all countries. That would be my principal objection to the amendment. We are all in favor of the thrust of it, which is to do anything effective we can to stop the illegal drug traffic. How effective this amendment would be as opposed to the existing law, I am not at all sure. But I am prepared to go ahead and vote on the amendment, if no other Senator wishes to speak on it.

Mr. HARTKE. Mr. President, will the Senator yield for a question?

Mr. FULBRIGHT. I yield.

Mr. HARTKE. I quite agree; as I said before, there is no question of the provisions of the present law. Nor is there any question that this type of amendment was previously defeated in the Senate. However, neither of those facts is justification for rejecting the amendment at this time. The fact is that the President stated he is in favor of terminating economic assistance to those countries who contribute to our drug problem.

Furthermore, the former Deputy Director of the Bureau of Narcotics and Dangerous Drugs says that this region of Southeast Asia, the so-called Golden Triangle, has the potential to replace Turkey as the major supplier of heroin to illicit markets in this country. I understand that the chairman of the Foreign Relations Committee is saying that the amendment should apply to all countries, but the fact is that we are providing practically no aid to Laos and very limited aid to Burma.

Mr. FULBRIGHT. What does the Senator mean, no aid to Laos?

Mr. HARTKE. Would the distinguished chairman of the Foreign Relations Committee advise me of the amount of aid provided for Laos in the pending bill?

Mr. FULBRIGHT. Perhaps it is a little amount to the Senator, but it is more than \$400 million for this fiscal year.

Mr. HARTKE. If it would make it more palatable to the chairman of the Foreign Relations Committee, I would have no objection to modifying the amendment to include Laos.

Mr. FULBRIGHT. Laos receives assistance from funds authorized in this bill as well as from funds available in the regular DOD budget.

For fiscal 1973 it is scheduled to receive a total of \$416.7 million. Last year it received \$294.9 million. It amounts to a lot of money.

Incidentally, the Laotian Prime Minister is now paying the members of his Parliament \$5,000 for their votes; did the Senator see that in the paper? Our aid is helping him to pay for those votes.

Mr. HARTKE. The chairman knows I have no sympathy for those dictatorial regimes and those regimes which are—

Mr. FULBRIGHT. I do not know what the Senator thinks he is going to ac-

comply. The President says he is against it. He has plenty of authority under existing law, if he is really against it, to cut off aid in Thailand or anywhere else.

Mr. HARTKE. I understand that. But in the face of hard evidence the President has failed to act, when the President fails to act I do not think the Senate can stand by idly.

Mr. FULBRIGHT. What makes the Senator think that if we put his amendment in, the President will act? He issues these little billets-doux to the Committee on Foreign Relations all the time, and then does whatever suits him. It is not difficult to have one of these little papers prepared and sent up. They do it all the time.

Mr. HARTKE. I am not willing to surrender quite that easily to the administration.

Mr. FULBRIGHT. I am not surrendering; I am stating a fact. It happens all the time.

Mr. HARTKE. The fact is that at the present time there has to be a finding by the President that there is a violation in terms of compliance, but that is not an affirmative finding. The way the bill is drafted, it is negative. The Hartke amendment shifts the burden to the President to make a definitive finding. That is not the case in the present law.

Mr. FULBRIGHT. Yes, he has to send up a finding and say, "I find Thailand is doing everything it reasonably can," under the Senator's amendment.

Mr. HARTKE. That is right.

Mr. FULBRIGHT. Does the Senator think it is difficult for him to do that?

Mr. HARTKE. I think it puts the President in a position where he may well make a definitive statement which is absolutely controverted by the facts.

Mr. FULBRIGHT. Does the Senator think he has any difficulty doing that?

Mr. HARTKE. I understand the point the Senator is making, but I do not believe we should surrender our authority to the President and in essence imply that we are completely ineffective in requiring the President to be truthful with the American people—

Mr. FULBRIGHT. The way to do it is to cut off the funds.

Mr. HARTKE. I am willing to do that.

Mr. FULBRIGHT. The Senator's amendment would make more sense if he would just leave out the last sentence.

Mr. HARTKE. The fact is that I still would like to have the President make that finding. If we have the President make the finding, then we have the President in a position in which his finding may well be controverted by the evidence. I think that is a much stronger case.

Mr. FULBRIGHT. Why not modify it to make it applicable to all countries, then?

Mr. HARTKE. Would the Senator agree to accept it if I did that?

Mr. FULBRIGHT. It would make it a lot better amendment. I do not like to agree to it, in the face of the Senate's recent vote. I frankly have no objection to it, though I do not think it is any great step forward. But if we are going to do it

at all, it ought to be applicable to all countries.

The Senate just voted on this question 2 or 3 months ago, and defeated such a proposal by a vote of 68 to 22.

Mr. HARTKE. If the chairman of the Committee on Foreign Relations would find it possible to agree to the amendment by making it applicable to all countries and not just Thailand, I am willing to modify the amendment. The reason I have stressed Thailand is that it is presently the principal conduit for the shipment of opium in Southeast Asia.

Mr. FULBRIGHT. Well, that shifts, though. We shifted it from Turkey by paying them millions not to grow poppies. Now each of them will come along in turn; that is a great incentive for other countries to start growing it, because if they grow enough, they think we will pay them millions not to grow it. This is a good way to make money, carrying this absurdity to its logical conclusion, we may, I say facetiously, start growing it in Arkansas, and see if they will pay us to quit. It is a fairly easy way to make money, you see.

Mr. HARTKE. Let me say to the chairman that if he would find it acceptable to amend the amendment to such an extent that it would apply to all countries in addition to Thailand, the Senator from Indiana certainly finds no objection to that kind of provision.

Mr. FULBRIGHT. Well, if the Senator will modify it to apply to all countries, it will be the same as existing law except, as the Senator says, the President is put under the burden of making an affirmative finding. I would have no disposition to oppose it, and also I might say that on that ground it is different from the one that was defeated and from the provision in the House bill. Therefore, it would be in conference and we could resolve it then.

So I have no objection to that.

Mr. HARTKE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARTKE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment, as modified, will be stated.

The assistant legislative clerk proceeded to read the amendment, as modified.

Mr. HARTKE. Mr. President, I ask unanimous consent that reading of the amendment, as modified, be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment, as modified, will be printed in the RECORD.

The amendment, as modified, is as follows:

On page 17, line 25, strike out the quotation marks.

On page 17, after line 25, add the following: "(z) No assistance shall be furnished under this Act (other than chapter 8 of part I, relating to international narcotics control), and no sales shall be made under the Foreign Military Sales Act or under title I of the Agricultural Trade Development and Assistance Act of 1954, to Thailand, Laos, Burma, Cambodia, and South Vietnam. This restriction may be waived when the President determines that the governments of Thailand, Laos, Burma, Cambodia, and South Vietnam have taken adequate steps to carry out the purposes of chapter 8 of part I of this Act, relating to international narcotics control."

Mr. HARTKE. Mr. President, what the amendment does, in substance, is to extend the jurisdiction of the restriction in this fashion: Whereas the origin amendment applied only to Thailand, this amendment, as it is now drafted, applies to Thailand, Laos, Burma, Cambodia, and South Vietnam. In other words, it deals only with those countries in Southeast Asia.

I have discussed this matter with the chairman of the Committee on Foreign Relations. I think this modification will accomplish our purpose of directing attention toward the "Golden Triangle," which has the potential to replace Turkey as the chief supplier of heroin and dangerous drugs to the United States. In this manner, we have really covered the entire area. If it becomes necessary at a later date to expand these aid restrictions to other countries, then we have established a precedent in the Senate to support such action.

Mr. FULBRIGHT. Mr. President, I think this is a great improvement over the original language, because it is made applicable to all the countries in Southeast Asia that are identified with the drug traffic. As the Senator properly said, this is the principal source of the supply, both to our soldiers in South Vietnam and to this country.

I am prepared to take the amendment to conference. As I have already stated, the amendment is quite similar to existing law, but it does put an onus upon the President to make an affirmative finding if the aid is not to be discontinued. So I think it is an improvement over the existing law.

The PRESIDING OFFICER. Is there further discussion of the amendment? If not, the question is on agreeing to the amendment, as modified, of the Senator from Indiana.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the privilege of the floor be granted to Mr. Basil Condos during the consideration of the amendment I am about to offer.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

At the end of the bill insert a new section as follows:

"Sec. 19 (a) The Congress finds and declares—

"that the purpose of United States involvement in South Vietnam—self-determination for the people of that nation—has been frustrated by actions of the Thieu regime, including the abolition of hamlet elections, newspaper censorship, and the arrest and torture of President Thieu's political opponents;

"that continued United States military and economic assistance to the Thieu regime, coupled with the United States failure to condemn the repressive acts of that regime, creates the impression that the United States supports the forcible imposition of totalitarian rule in South Vietnam; and

"that rapid and total elimination of the United States military presence in Indochina is fully consistent with our expressed interest in promoting self-determination for the people of South Vietnam.

"(b) The United States shall refrain from supporting or appearing to support actions whereby the Government of South Vietnam attempts to discourage legitimate opposition by abridging the right to vote, freedom of the press, or other individual liberties.

"(c) The President shall use all available leverage, including the withholding of assistance authorized by this Act, to implement the policies set forth in this section.

"(d) On January 1, 1973, and at semi-annual intervals thereafter, the President shall report to the Congress on any and all action he has taken to implement the policies set forth in this section; *Provided*, That no such reports shall be required after the termination of all United States military assistance to South Vietnam."

Mr. STEVENSON. Mr. President, when the United States intervened in the Indochina war, it changed the character of that conflict. What began as guerrilla warfare finally became a high-technology war of electronic battlefields and laser bombs. While professing to Vietnamize the war, we Americanized it.

In thus transforming the war, we have helped give the South Vietnamese a landscape desiccated by herbicides and pocked by bomb craters. We have helped give them abandoned hamlets and teeming slums and a deadly war the Thieu regime cannot win.

And, it appears, we are also giving the South Vietnamese people a military dictatorship.

Three months ago President Thieu rammed a bill through the national assembly giving him the power to rule by decree. A distinguished journalist—Harry Bradsher of the Washington Star—reported that the U.S. Embassy in Saigon supported Thieu's efforts to get the power to rule by decree. It seems this report has never been denied.

Thieu has wasted no time in using his power to install all the machinery of a full-blown police state.

He has transferred from civilian authorities to military authorities the power to control food distribution; to check private residences both at day and

night time; to detain elements considered dangerous for the national security or public order; to prohibit strikes and demonstrations or meetings harmful to the national security and public order, and to censor printed matter.

He has transferred from civilian courts to military courts the power to try demonstrators, strikers, and ordinary civilian offenders.

He has abolished hamlet elections, decreeing that hamlet officials will be appointed instead by military province chiefs under his direct control.

He has decreed that the public prosecutor may invade the headquarters of a political party "to protect public order and the national security."

He has instituted a press censorship decree so repressive as to be condemned by an international association of newspaper publishers. The decree makes it a crime to publish any unfavorable statement about Thieu, even if the statement is true. It requires a \$46,000 deposit as a precondition of publication, a requirement which has forced at least 10 papers to shut down in less than 2 months. Only last week the editor of a paper which has continued to publish was convicted of violating the press censorship decree. The crime was printing widely known, unclassified statistics about U.S. bombing of Indochina. The penalty was a year in jail.

Mr. President, I ask unanimous consent that an article published in the Washington Post on September 23, 1972, entitled "Saigon Newspaper Punished" be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENSON. Mr. President, he has decreed that "special punitive measures will be applied against unlawful acts that seriously harm the national security and public order." Reports from Saigon indicate that the "special punitive measures" includes mass arrests, imprisonment of 8-year-old children, and torture of women.

Mr. President, I ask unanimous consent that an article published in the New York Times on August 13, 1972, entitled "Saigon Torture in Jails Reported," be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. CHILES). Without objection, it is so ordered.

(See exhibit 2.)

Mr. STEVENSON. Mr. President, it is now clear that we are witnessing nothing less than a ruthless and systematic campaign to destroy or silence legitimate opposition in total disregard of the popular will and of individual liberties. It is equally clear that the Thieu regime could not conduct its campaign of repression—and indeed could not exist at all—without massive military and economic assistance from the United States.

We assert that our purpose in South Vietnam is to promote freedom and self-determination for the people of that nation. Our client subverts that purpose in

a calculated effort to consolidate power for himself and a small clique of generals, landowners, and profiteers. And our only response is an embarrassed silence or a feeble attempt by the Department of State to say that these are internal matters for which we are not responsible. In at least one case—abolition of the hamlet elections—the Department of State acted as an apologist for the Thieu regime by suggesting that its action was a temporary expedient occasioned by the North Vietnamese offensive, but the fact is that Thieu did not abolish hamlet elections until after the offensive had run its course.

Mr. President, it will not do to shrug off Thieu's reign of terror as an internal matter. We supported Thieu in the rigged election of 1967; we conducted political polls and propaganda campaigns for him in 1969 and 1970; we continued our massive support of his regime while he drove his opponents out of the presidential election in 1971—all in the name of freedom and self-determination.

If Mr. Nixon had chosen to permit the people of South Vietnam a choice, they might have elected General Minh in 1971. He, and even a popularly elected Thieu could have governed with public support, and, in the case of Minh at least, made peace. In either event, the United States could have declared its purpose fulfilled and gone home. But the administration failed once again to perceive that morality and self-interest can coincide. It permitted its puppet then, as it does now, to pull the strings and play the tune of which the people of Vietnam die.

The Thieu regime is corrupt and tyrannical. It rules by force because it cannot rule by popularity. It is the principal obstacle in the way of a negotiated settlement. Both sides have made it clear that they cannot and will not coexist peacefully. Yet, the Nixon administration insists upon propping up this dictatorship in derogation of everything it says we have fought for, and to the detriment of the negotiated settlement which it says it seeks.

If the United States is to harmonize its action in Indochina with its rhetoric, the initiative will have to come from the Congress. And President Thieu has given us a clear choice.

The United States can no longer be for both the Thieu regime and the people of South Vietnam. It must either actively and, if necessary, publicly oppose Thieu's repressive policies, or abandon any pretense that its support of Thieu promotes self-determination.

Mr. President, Thieu's actions point up the tragic irony of our Vietnam policy: we say we oppose the imposition of a Communist government on the people of South Vietnam, yet we aid and abet Thieu's imposition of a police state on the people of South Vietnam. The longer we fight to preserve the difference between a "free" South Vietnam, and a "totalitarian" North Vietnam, the less of a difference there is to preserve.

Last month Mr. Thieu expressed the belief that South Vietnam was experiencing too much democracy too soon. He has acted consistently with his beliefs. It

is time that we did the same, and for that reason I hope that this amendment will be agreed to.

The amendment simply declares that the purpose of U.S. involvement in South Vietnam—self-determination—has been frustrated by the repressive actions of the Thieu regime and that continued U.S. support for that regime creates the impression that the United States supports its imposition of totalitarian rule in South Vietnam. The amendment then states that the United States shall refrain from supporting Vietnamese attempts to intimidate legitimate opposition and that the President shall use all available leverage to end the repressive acts of the Thieu regime and report on his progress semiannually to the Congress. The amendment is consistent with the sentiment of many in this Chamber, including myself, that the best way to promote self-determination in South Vietnam is to leave South Vietnam. That consistency is made explicit in the amendment.

I would hope very much that the chairman would agree to accept it.

EXHIBIT 1

SAIGON NEWSPAPER PUNISHED

(By Thomas W. Lippman)

SAIGON, Sept. 22.—The business manager of an opposition newspaper was sentenced to a year in prison by South Vietnam's military court to day because the paper printed year-old statistics on the tonnage of U.S. bombs dropped in Indochina.

It was the first case considered by the court under the stringent new press law issued Aug. 4 by President Nguyen Van Thieu's government.

The newspaper, Dien Tin, published by a supporter of Thieu's chief political rival, Duong Van (Big) Minh, was found guilty of printing an article "harmful to the national security" and of "sowing confusion among the people." The paper was fined one million piastres, about \$2,300.

The prison term, which could have been up to five years, was imposed on Vo Thi Suong, 32, a woman about whom almost nothing is known except that she is apolitical and had nothing to do with the paper's contents or editorial policy.

The editor and publisher, Hong Son Dong, is a close associate of Minh, who until his withdrawal from the race, was Thieu's leading opponent in last year's presidential election.

But as a member of the South Vietnamese Senate, Dong is immune from prosecution. The press law stipulates that in such a case, a paper's business manager must face the court.

Miss Suong was allowed to remain free while her conviction is being appealed to South Vietnam's Supreme Court, but was required to post a bond of 1 million piastres with the court in the meantime.

Neither she nor Sen. Dong could be reached for comment. But her lawyer, Bui Chanh Thoi, had plenty to say.

The sentence was "not logical," he said, because the terms of the laws are "very ambiguous" and contain no definition of what is "harmful to the national security."

He also said that the offending issue of the paper, that of August 16, had been confiscated before it appeared on the streets.

"Since readers could not read the article, how could the paper be harming the national security and sowing confusion among the people?" he asked.

He said he believed the punishment was intended more as a warning for the future

than as a realistic sentence for a genuine offense.

That view of the case was hardly a surprise, since the government has made clear that the press law was intended to put some newspapers out of business, which it did, and curb the contents of others, which it has also done.

The offending article was based on a statistical analysis of the U.S. bombing campaigns entitled "The Air War in Indochina," published by the Center for International Studies of Cornell University. It first appeared in print a year ago, is widely available and used as a reference work here, and is largely based on public documents and the Pentagon Papers.

Its conclusions are critical of the air campaign. But persons familiar with the Dien Tin article said it contained only the statistics, not the conclusions.

In general, Saigon newspapers are permitted to print only the war news distributed by the South Vietnamese army's Psychological Warfare Department.

EXHIBIT 2

SAIGON TORTURE IN JAILS REPORTED

(By Sydney H. Schanberg)

SAIGON, SOUTH VIETNAM, Aug. 12.—Documents smuggled out of South Vietnamese prisons and extensive interviews with former prisoners paint a picture of widespread torture of people jailed by the Saigon Government since the North Vietnamese offensive started four and a half months ago.

Here is a sampling of the prisoner's accounts:

"Nguyen Thi Yen was beaten unconscious with a wooden rod. Later, when she revived, she was forced to stand naked before about 10 torturers, who burned her breasts with lighted cigarettes."

"Trinh Dinh Ban was beaten so badly in the face that the swelling shut and infected his eyes. The police drove needles through his fingertips and battered him on the chest and soles of his feet until he was unable to move."

"Vo Thi Bach Tuyet was beaten and hung by her feet under a blazing light. Later, they put her in a tiny room half flooded with water and let mice and insects run over her body."

STORIES ARE TYPICAL

These particular accounts are said to describe the torture of three student leaders still being held in South Vietnamese jails on suspicion of being Communist sympathizers. The accounts in these documents and many others obtained by this correspondent were purportedly written by prisoners—and in some cases by sympathetic guards—and then smuggled out.

The three accounts are typical of the stories told in the other documents and in the interviews about the treatment of the thousands of students, workers, peasants, women and children arrested by the national police and military authorities in the "pre-emptive sweeps" made in the search for Communist sympathizers and agents since the North Vietnamese Army began its offensive.

Some of the documents reached this correspondent through friends of prisoners or critics of the Government to whom the papers had been passed. Some of the interviews were also arranged this way. Additional information was gathered on the basis of other leads.

There is no way to verify the accounts of torture first hand, for the Saigon Government refuses to allow journalists to visit its prisons, which it calls "re-education centers." A formal written request was denied.

All of those interviewed said their names could not be used because they feared police reprisals.

REPORTS ARE SIMILAR

As with the smuggled documents, it is impossible to corroborate the accounts given by former prisoners in interviews. But although one cannot establish after the fact that the welts and scars visible on their bodies were inflicted by the police, the widespread reports bear out the prisoners' version.

Government officials and pro-Government legislators defend the recent repressive measures by arguing that the survival of South Vietnam is at stake. Critics reply that only the Government of President Nguyen Van Thieu, not South Vietnam, is at stake.

"Necessity requires us to accept a flexible view of the law," said one official. "You wouldn't wait until the Vietcong agent pointed his gun at your back before you handcuffed him, would you? Legal aspects do not count when there is a question of survival involved."

The victims obviously feel differently. Here, for example, is part of an account given by a woman who was interrogated intensively but not beaten in a police detention center in Saigon and then released:

"When you were being interrogated, you could hear the screams of people being tortured. Sometimes they showed you the torture going on, to try to frighten you into saying what they wanted you to say."

"Two women in my cell were pregnant. One was beaten badly. Another woman was beaten mostly on the knees, which became infected."

"One high school student tried to kill herself by cutting both wrists on the metal water taps in the washroom, but she failed. They had tortured her by putting some kind of thick rubber band around her head to squeeze it. It made her eyes swell out and gave her unbearable headaches."

"One girl was so badly tortured that the police left her in a corridor outside the interrogation room for a day—so that other prisoners would not see her condition."

This was a typical story of those interviewed. Some said that water had been forced down their mouths until they nearly drowned. Others told of electric prods used on sensitive parts of the body, of fingernails pulled out and of fingers mashed.

Several of the informants said they had discovered, while in prison, a sardonic saying by the police—"Khong, danh cho co."—"If they are innocent, beat them until they become guilty."

The accounts of the informants indicated that the worst torturing took place while prisoners were being interrogated in police centers—before they were transferred to prisons such as Con Son and Chi Hoa. Con Son is South Vietnam's biggest civilian penitentiary, situated on Con Son, an island 140 miles southeast of Saigon. Chi Hoa, the country's second largest prison, is in Saigon.

The informants said that most of the torture and interrogation took place between 10 P.M. and 3 A.M. They said some of the prisoners, under torture or fearing torture agreed to become police agents to win their release.

NAMES ARE GIVEN

Some of the documents purportedly smuggled out of the prisons gave the names of five persons who had been tortured to death recently in jail, and said this was only a partial list. The documents listed Bui Chi and Nguyen Duy Hien, students from the Hue area who were said to have died in Con Son. Also listed were Ta Xuan Thanh, Dinh Van Ut and Bui Duong of Saigon, who were said to have died in Chi Hoa.

It is impossible to tell, without Government cooperation, how many thousands have been arrested since the North Vietnamese offensive began. Most foreign diplomats think the figure is well over 10,000. One American

source said that slightly over 15,000 people had been jailed and about 5,000 released later. But whatever the exact figures, it is clear that thousands remain in prison and that arrests continue.

The bulk of the arrests have been in the Mekong Delta south of Saigon and in the extreme north. Many students were seized in Hue, some of them reportedly while working in refugee centers.

LITTLE DISTINCTION INDICATED

It is also impossible to tell how many of those arrested really have Communist connections and how many are simply opposed to the Government of President Thieu, because the police seem to make little distinction. There is a third category of prisoners as well—people who were apparently seized at random and who committed no crime. They just happened to have been in the wrong place.

Critics of the Government say that each district administration has been given a quota of arrests and that local officials have been trying to meet the quotas quickly with little regard for legal niceties.

According to one document, purportedly written by a sympathetic jailer, an old woman has been imprisoned in Con Son because one of her sons is regarded as a Communist sympathizer and is in hiding. Her four other sons are in the South Vietnamese Army. She wants to write them about what had happened to her, the jailer said, but she has forgotten their military addresses and the prison authorities will not help her communicate with them.

FAMILY LINKS ONE CAUSE

This woman seems to be typical of many of those arrested recently. They were picked up because they have relatives who are active Vietcong or suspected of having some link with the Communists. But according to the Vietnamese officials themselves, most families in South Vietnam have a relative or relatives "with the other side" and the Government would have to arrest millions if it were to apply this criterion across the board.

Nguyen Van Thong, a pro-Government member of the lower house and chairman of the committee that deals with police and prison legislation, said in a recent interview that the Government should have carried out these arrests a lot earlier. Though Mr. Thong acknowledged that some innocent people had undoubtedly been arrested, he said "These people will sooner or later get out of jail."

Legal form, rarely observed with fidelity at any time in South Vietnam's recent history, has clearly been abandoned since the enemy offensive began. On the one hand, President Thieu continues to declare that the back of the North Vietnamese drive has been broken, yet on the other he has been using his recently granted special powers to narrow civil liberties further.

LAWS SEEM TO BE IGNORED

Although no Government edict has been issued, the normal laws governing the rights of the accused appear to have been virtually suspended. Often those arrested are reportedly not told the charge against them nor allowed to consult a lawyer. Prisoners are sometimes kept for months and years without a hearing or trial. Often the police will not acknowledge that they are holding a particular person so his family is unable to locate him.

In a sense, many of these people and their cases simply disappear—except for reports that leak out clandestinely.

The same jailer at Con Son who purportedly wrote of the old woman with four sons in the army also was said to have given the following description of an area of the prison holding 1,500 people from Hue and other northern areas:

"I was horrified to find that the place was full of women and old people and more than

50 children under 9 years old. None of them knew why they had been brought here. In general, their arrests had happened like this: Village officials would come and call them to the village headquarters. Once they were there, the officials would tell them falsely that they had to be evacuated, presumably because of near-by fighting. And then they would find they had been deported to Con Son."

This prison made headlines two years ago when the treatment of hundreds of prisoners jammed into small cells known as "tiger cages" was publicized by two American Congressmen on a fact-finding tour of Vietnam. The Congressmen managed to enter the "tiger cage" area over the objections of both the South Vietnamese warden and his American adviser.

Although the United States is the major provider of aid to the South Vietnamese police and prison system, the American mission here refuses to discuss the situation on the record, contending that it is entirely a South Vietnamese program.

AIRLINE ROLE CHARGED

According to authoritative sources, however, Air America, the airline operated in Indochina for the Central Intelligence Agency, has been used to transport arrested people to Con Son.

The two top American advisers to the South Vietnamese on police and prison matters—Michael G. McCann and Theodore D. Brown, director and deputy director, respectively, of the American mission's public-safety directorate—do not deny the widespread torture or the use of Air America; they simply refuse to comment. Requests for interviews with both men were rejected.

A high American source, who granted an interview but insisted on anonymity said that being outside the situation "I cannot affirm that tortures don't take place" and he acknowledged that "all kinds of deplorable things may well be going on." But he argued that some of those arrested were known anti-government and Communist activists who had been involved in terrorist incidents—"and who aren't exactly the nice college kids next door."

Critics of the Government describe what has been happening recently as a police-state operation. And while repressive tactics are not so obvious on the streets of Saigon and other cities as they apparently are in the jails, there have been disquieting signs of intimidation.

The police set up checkpoints from time to time in Saigon, on the pretext of searching people and vehicles for weapons or explosives destined for terrorist activities. But on the several occasions this correspondent has stood close by and watched these searches, it appeared that the checkpoints were often no more than means of shaking down Vietnamese for money or goods.

Despite these tactics, there has been little protest.

Mr. FULBRIGHT. Well, Mr. President, the Senator from Illinois has made a very fine statement. There is nothing in it with which I do not agree. He is quite right about the course of the war in Vietnam, that it has been turned into an American war; that it started out, as he said, as a guerrilla and civil war and since we took over it has become a tragic story, with the gradual elimination of all aspects of democracy in South Vietnam, all of which has been reported fully in the press. I am not at all sure the amendment will be persuasive on the President because I assume that he will take the position that he is presently doing all he can to assure self-determination in South Vietnam—at least his published statements have been to that effect.

But, in any case, I personally approve of the thrust of the Senator's amendment which is that we should not continue to support totalitarian rule in South Vietnam and that we should end our occupation there. I certainly agree that the way to promote self-determination in South Vietnam is for the United States to remove all of its forces and come home.

So, I am prepared to accept the amendment.

The PRESIDING OFFICER (Mr. CHILES). The question is on agreeing to the amendment of the Senator from Illinois (Mr. STEVENSON).

The amendment was agreed to.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the name of the Senator from Minnesota (Mr. HUMPHREY) be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I thank the distinguished Senator from Arkansas (Mr. FULBRIGHT) for his support.

MOTION TO RECONSIDER A PREVIOUS VOTE

Mr. FULBRIGHT. Mr. President, on last Friday the Senate agreed to an amendment of mine on lines 10 and 11 of page 17 of the bill. I did not at that time move to reconsider that action of the Senate. I deferred to the members of the minority staff and told them that we would not act until this noon.

I understood that the minority leader would be back by noon. I would like at this time to move to reconsider the vote by which my amendment on lines 10 and 11 of page 13 of the bill was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER (Mr. TUNNEY). The question is on agreeing to the motion to table.

Mr. AIKEN. Mr. President, I suggest the absence of a quorum.

Mr. FULBRIGHT. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. FULBRIGHT. Mr. President, is that in order when a motion to table is being considered?

The PRESIDING OFFICER. A quorum call is in order if there is no further debate.

Mr. AIKEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. AIKEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AIKEN. Mr. President, I tried to find out where the leadership is at this moment. I am unsuccessful in finding out anything. As far as I am concerned, I do not feel that I should hold up the work of this session any longer than is absolutely necessary. It has been held up too long already with these great inspiring speeches which take place every morning

when no one is in the gallery and no one on the floor.

Under these circumstances, if there is no one interested in this legislation, as far as I am concerned, the Senate may have a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. [Putting the question.]

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE SCOTT AMENDMENT TO H.R. 16029

Mr. FULBRIGHT. Mr. President, tomorrow the Senate is scheduled to vote on the Scott amendment to the foreign aid bill. That amendment would increase the money amounts in the bill by a total of \$370 million. It would tack on an additional: \$200 million for military assistance; \$135 million for supporting assistance or budget subsidies; and, \$35 million for military credit sales.

The bill now contains \$1.35 billion for these programs. I believe this amount is overly generous and no increase is warranted.

In 1970, at the outset of the Nixon doctrine, Congress approved only \$815 million for these same programs, or \$535 million less than is in the bill as it now stands. The Scott amendment would serve to double the 1970 appropriation. I hope it will be defeated.

Mr. President, Senators should be aware that the amounts proposed in the bill, although substantial in themselves, are in fact but a fraction of the total military aid and arms sales program proposed for this fiscal year. The price tag on the entire package is \$8.4 billion. A breakdown of this multibillion program is contained in the committee's report and I ask unanimous consent that it be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Military and related assistance and arms sales programs, fiscal year 1973 (executive branch estimates)

	Amount
Military assistance grants.....	\$819,700,000
Foreign military credit sales....	629,000,000
Excess defense articles.....	245,000,000
Ships loans.....	39,600,000
Security supporting assistance....	879,418,000
Foreign military cash sale (DOD).....	2,200,000,000
Commercial sales.....	722,598,000
Military assistance — DOD funded.....	2,924,700,000
Total military and related assistance and sales.....	8,460,016,000

¹ Valued at one-third acquisition cost.

Mr. FULBRIGHT. Mr. President, my opposition to the pending amendment stems in large part from knowing that the additional \$370 million, like most of the money already in the bill, will be

used, either directly or indirectly, in a manner contrary to our own values and objectives.

The Foreign Assistance Act of 1961, as amended, states, for example:

The Congress declares that the freedom, security, and prosperity of the United States are best sustained in a community of free, secure and prospering nations.

The Congress declares, therefore, that it is not only expressive of our sense of freedom, justice and compassion, but also important to our national security that the United States, through private as well as public efforts, assist the people of less-developed countries in their efforts to acquire the knowledge and resources essential for development and to build the economic, political and social institutions which will meet their aspirations for a better life, with freedom, and in peace.

The Congress declares that it is the policy of the United States to support the principles of increased economic cooperation and trade among countries, freedom of the press, information, and religion.

Maximum effort shall be made, in the administration of this Act, to stimulate the involvement of the people in the development process through the encouragement of democratic participation in private and local governmental activities.

And so it goes, Mr. President, one pious statement after another.

But what is the reality? Where is the "community of free, secure, and prospering nations"? What ever became of our effort to help the poorer nations build "economic, political, and social institutions which will meet their aspirations for a better life, with freedom and in peace"? Where have we supported "freedom of press, information"? And what ever happened to the "maximum effort to stimulate the involvement of the people in the development process through the encouragement of democratic participation in private and local governmental activities"?

Mr. President, the reality of foreign aid is that all of these hopes, all of these dreams have gone aglimmering, and no amount of money can alter the situation or breathe new life into the corpse of foreign aid.

One has only to pick up the daily newspaper to appreciate how bankrupt this program has become. For example, Friday's Washington Post carried a front-page story entitled, "Lao Regime Said To Bribe Opposition." The article reads:

The Laotian government used Treasury funds this week to bribe legislators to end their six months opposition to Prime Minister Souvanna Phouma, highly knowledgeable diplomatic sources disclosed today.

Or, there is the story from the Evening Star of August 14 entitled, "Diplomats Charge 'Big Steal' of Laotian AID Funds." This article points out:

Diplomats here (Vientiane) are highly critical of the American AID mission and the Lao Government for failing to take meaningful steps to halt corruption and mismanagement in the foreign exchange funds established to stabilize the Lao economy.

The fund consists of more than \$25 million, of which the U.S. contributed more than \$16 million.

Diplomats here call the effort "the big steal" and claim the fund almost totally goes to the powerful Laos Mandarin, the Sawanikone family, and a handful of Chinese businessmen.

Mr. President, the United States provides direct budget subsidies to the Laotian treasury with cash grants from supporting assistance. This year Laos is scheduled to receive a total U.S. aid package costing \$417 million. This will bring the total amount of our aid to Laos since 1946 to over \$2 billion.

Similarly discouraging are the reports coming out of Cambodia. Since the resumption of aid to that nation in 1970, the United States has provided \$372 million in military grant aid alone. Another \$225 million is scheduled for this fiscal year. Despite these efforts, the performance of the Cambodian Army has been disappointing at best and, according to an article in the Washington Post of September 4, "Cambodia's Soldiers Still Quit Fighting at Dinnertime." The Sun of August 19 carried a report entitled, "In Cambodian Army Corruption Thwarts AID." In this report we learn.

There is hardly a battalion or brigade command post without a gleaming white or pearl Mercedes parked among the olive-drab military vehicles.

Adding credibility to this observation is the list of Cambodian imports financed by cash grants from the United States. Looking at some of the items on the list, one wonders if there is any relationship between Cambodia's imports and the needs of a country suffering the ravages of war; some of the items on the list include the following:

Air-conditioning equipment and repair parts.....	\$65,407.97
Brewery supplies (bottle tops).....	19,465.00
Cellophane tape.....	10,340.44
Cigarette manufacturing materials.....	702,994.66
Garden hose.....	138,221.45
Office machines:	
Accounting machines.....	46,998.88
Adding machines.....	59,780.16
Calculators.....	126,110.00
Duplicating machines and accessories.....	36,896.63
Typewriters.....	436,470.77
Pen refills (4,000,000).....	82,330.00
Plumbing fixtures (color).....	9,991.28
Soft drink manufacturing equipment and material.....	1,011,903.58
Television sets.....	17,120.00
Time magazine.....	5,850.00
Toothpaste.....	5,483.14

Finally, there is Vietnam. The stories are both endless and taxing on the imagination: "Saigon Declares End of Elections on Hamlet Level"; "United States Admits End of Viet Hamlet Vote"; and "Vietnam: Democracy Was Very Disorderly."

And, for the sake of variety, there are any number of additional selections, each as morbid as the other: "United States to Train Taiwanese in Submarines"; "United States Will Pay \$9 Million on Malta Rent"; "Greece's Jet Purchase Worries Turkish Regime"; and, "United States Drops Piasters from Heaven on North Vietnam."

Each of these articles portrays, in one way or another, various aspects of the

aid program—a program akin to a diplomatic pork barrel, dispensing graft and corruption from the Plain of Jars to the jungles of the Amazon.

If we accept the Scott amendment, we will simply be perpetuating a hoax—as cruel a hoax as was ever foisted on the taxpayers of this country and on people around the world who once had faith in us and “the American dream.”

If we reject the amendment, as we ought to, then at least we will be holding the line and serving notice that we recognize the aid program for what it is and not for what we hoped it would be.

The military aid program has become a dead end road. We must turn back.

On July 24, just a few short weeks ago, the Senate defeated a foreign aid bill with the same money amounts as pro-

posed by the Scott amendment. I hope the Senate will render the same judgment, this time. I hope the pending amendment will be defeated.

Mr. President, I ask unanimous consent that all of the material I have mentioned be inserted in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

COMMODITIES APPROVED FOR FUNDING UNDER U.S. GRANTS AGREEMENT (THROUGH MAR. 10, 1972)

	\$20,000,000 agreement	\$50,000,000 agreement		\$20,000,000 agreement	\$50,000,000 agreement
Air-conditioning equipment and repair parts ¹		\$65,407.97	Office machines:		
Aircraft engines ¹		5,470.40	Accounting machines		\$46,998.88
Aluminum sheets	\$68,703.10		Adding machines	\$59,780.16	
Automotive equipment:			Calculators		128,110.00
Batteries ¹	237,128.97	126,065.74	Duplicating machines and accessories	30,356.63	6,540.00
Passenger vehicles (autos and station wagons) ¹		115,038.54	Typewriters	260,480.77	179,995.00
Repair parts ¹	71,895.14	299,706.21	Padlocks		5,158.45
Tires and tubes ¹	486,678.25		Paper products:		
Tractors, bulldozers, fork lifts, and repair parts	24,332.69	315,482.97	Cardboard	152,456.58	
Trucks and trailers	169,831.16	544,743.19	Duplex board	63,640.50	
Battery chargers		10,542.20	Duplicating paper	158,604.88	14,852.40
Bicycle parts ¹	146,448.00		Kraft paper	30,480.00	
Bicycle tires and tubes ¹	24,600.00		Manifold paper	90,411.90	
Brewery supplies (bottle tops) ¹	19,465.00		Newsprint	469,475.35	
Carbowax		19,223.52	Labels	57,075.00	
Cellophane tape		10,340.44	Waxed cartons	11,482.91	
Cement	232,539.00		Writing paper	421,647.00	
Chrome and nickel plating materials		22,607.50	Paraffin wax	49,363.20	
Cigarette manufacturing materials	360,519.82	342,474.84	Pen refills (4,000,000)		82,330.00
Compressors and repair parts		13,792.17	Petroleum products	7,950,448.20	
Copper wire		25,779.36	Pharmaceutical filtering machine		7,888.53
Cotton fabrics		623,023.00	Photographic supplies		71,502.02
Diesel engines and repair parts		21,472.13	Plumbing fixtures (color)		9,991.28
Dry cell battery manufacturing equipment and materials	650,631.38	25,430.00	Polyethylene/polypropylene/polystyrene	431,125.83	389,728.40
Electric motors and blowers		23,653.51	Polyvinyl	158,718.90	
Fire extinguishers		55,889.42	Printing ink	25,602.80	
Fluorescent tubes, starter and ballasts	140,957.98		Pumps	\$9,648.93	\$17,441.00
Freezers (commercial)		166,405.50	Sewing machines (household)	315,360.00	
Freon gas		6,114.00	Soft drink manufacturing equipment and materials	186,521.96	825,381.62
Garden hose	138,221.45		Spectrophotometer		5,680.16
Gasoline engines, 4-cycle, 1 cylinder	462,275.37	6,158.10	Steel hoops and sheets		22,278.62
Gasoline pumps and repair parts		62,278.30	Sugar, raw		2,000,000.00
Generators and repair parts		117,556.23	Sugar, refined		1,446,240.00
Glutamic acid (flavor intensifying season)	211,703.21		Television sets		17,120.00
Glycerine		34,010.43	Textile equipment, dyes and bleaches	255,835.37	444,149.43
Hand tools (mostly files and hacksaw blades)	5,398.00	127,159.66	Time magazine		5,850.00
Homogenizer and repair parts		1,489.00	Tinplate		883,277.00
Industrial chemicals ²	578,860.12	317,308.44	Toothpaste		55,483.14
Isopropyl alcohol, etc.		27,399.83	Transmission belts	14,778.91	
Lactose		14,244.30	Voltage regulators	5,387.00	
Magnetic tape ¹		7,682.00	Welders		10,384.43
Nonfat dry milk		1,445,961.00	Welding rods		57,368.75
			Total	15,238,872.42	11,727,659.10

¹ Includes commodities not eligible for financing under U.S. commodity import program for Vietnam.

² Includes chemicals for glass, leather, petroleum, plastic, rubber, soft drink, and textile industries.

Sources: Subcommittee compilation from AID's paid vouchers and purchase authorization U.S. economic assistance for the Khmer Republic (Cambodia). Committee on Government Operations, House of Representatives, House Report No. 92-1146, June 16, 1972.

[From the Washington Post, Sept. 22, 1972]

LAO REGIME SAID TO BRIBE OPPOSITION
(By D. E. Ronk)

VIENTIANE, Sept. 21.—The Laotian government used treasury funds this week to bribe legislators to end their six-month opposition to Prime Minister Souvanna Phouma, highly knowledgeable diplomatic sources disclosed today.

Sums paid to members of the National Assembly to support Souvanna were not specified, but some sources indicated they could have ranged up to \$5,000 for each of 15 or more legislators. However, these bribes are only the latest in a growing list of such payments this year, the sources said.

Sudden changes in the assembly's voting pattern, the sources said, came after Gen. Vang Pao, commander of the U.S.-supported irregular forces in northeastern Laos, hand-delivered the bribes to legislators.

Vang was chosen as the conduit after assemblymen said they would not accept the funds from Minister of Finance Sisouk Champassak, a central figure in the current political crisis, according to these sources.

Sisouk, who is also acting defense minister, is heir apparent to Souvanna and is supported by the major powers, including the United States, the Soviet Union and China.

It was through Sisouk that government opponents in the assembly attacked Souvanna, creating the crisis.

Money used to end the crisis did not come directly from U.S. aid funds, according to the sources. They suggested, however, that Western countries, which provide a good share of Laos' operating funds, indirectly financed the payoffs. The United States is the largest contributor, providing \$50 million annually in non-military aid.

U.S. Embassy officials here have been keeping a close watch over political developments since the assembly went into session. The root of the crisis was an effort by Vientiane's Sananikone family, Laos' richest, to move its members into key economic slots in the government.

To accomplish this objective, the Sananikone family called for an end to the decade-old tripartite government system that has rightists, neutralists and left-wing Pathet Lao members holding ministerial portfolios.

By ending the tripartite government, the Sananikones and their allies could claim a number of portfolios.

Souvanna has said that he would not remain as prime minister if the tripartite systems ends. Thus, political maneuvering in the assembly during the past few months virtually paralyzed the government.

The Sananikone family and its allies, led by Assembly President Phoui Sananikone, sought through legislative maneuvers to topple the Cabinet, and possibly force a dissolution of the tripartite system. Souvanna resisted by skillful counter-measures and plain stubbornness, the sources said.

The assembly had refused to consider in recent weeks the 1972-73 budget, demanding that Souvanna appear with his Cabinet for a showdown. In response, Souvanna carried on with last year's budget and refused to shuffle his Cabinet, thus avoiding a confrontation.

However, Souvanna may have to reconstitute his Cabinet anyway, since a number of ministers either wish to leave their posts or are seeking diplomatic positions abroad, the sources said.

With one third of the assembly's 60 members currently being on various junkets abroad, Souvanna apparently decided to try to break the deadlock by the simple expedient of payoffs to a majority of assembly members present in the capital, the sources said.

They said that Souvanna could be expected to present his Cabinet shortly. It is expected to be quickly approved along with the national budget.

[From the Evening Star and Daily News, Aug. 14, 1972]

DIPLOMATS CHARGE "BIG STEAL" OF LAOTIAN AID FUNDS

(By Tammy Arbuckle)

VIENTIANE.—Diplomats here are clearly critical of the American AID mission and the Lao government for failing to take meaningful steps to halt corruption and mismanagement in the foreign exchange operations fund established to stabilize the Lao economy.

The fund consists of more than \$25 million, of which the U.S. contributed more than \$16 million.

Diplomats here call the effort "the big steal," and claim the fund almost totally goes to the powerful Laos mandarin, the Sananikone family, and a handful of Chinese businessmen.

One diplomat described the attitude of the donor nations other than the United States—Britain, France, Australia and Japan—as, "the British treasury feels they need this program like they need a hole in the head, the French and Japanese are squirming to get out of it, and the Australians will follow the British lead."

Diplomats are upset because the fund is for the third time in 10 months running low because they say, of the dollar-hungry Lao elite and Chinese businessmen, and they have no intention apart from the United States of contributing further.

The main complaint about the fund is that it allows the Chinese to import into Laos cheaply by giving them dollars at 600 Lao kip to one, but the merchants do not pass the benefit on to the Lao. Instead, they sell goods at a minimum of 850 Lao kip to the dollar.

There are no price controls effectively enforced by the Lao government because the whole situation is enmeshed in Laos internal politics. The power-hungry Sananikone family is giving the merchants police protection and encouraging them to raise prices at the expense of fellow Laotians, Finance Minister Sisouk Na Champassak says.

Their objective, according to other Laotians, is to eliminate Sisouk as a serious contender for the premiership when Souvanna Phouma steps down, and install as premier their own man, Works Minister Ngon Sananikone. This elimination can be achieved by running Sisouk fiscal policies which, of course, is also the U.S. view of how best the aid money should be used.

At the same time, the Sananikone purses become heavier as the leading commercial family in Laos lives off U.S. financial support program, deals with the Chinese and smuggling of luxuries from Laos back into Thailand.

What incenses diplomats most is the failure of U.S. Aid Director Charles Mann to put pressure on Sananikones through the fund. Mann reportedly spends his efforts in raising more money for the fund through economic juggling of U.S. AID moneys instead of cutting it off or increasing the kip-dollar exchange rates, thus soaking up surplus kip and saving the fund's money.

Diplomats assess the U.S. mission as knuckling under to political pressure from the Sananikones, a pressure which is applied by that rightist family by threatening neutralist Souvanna Phouma's position as premier, a position the U.S. judges imperative for Souvanna to retain if there is ever going to be a political accommodation with Laos Communists with honor of some sort.

"The Sananikone have been smelling money and they are not going to let go now," diplomats said. A measure suggested to stop the drain on the U.S. and other donor nations is to stop the fund from allowing the kip-dollar ratio, to rise out of sight, and to put the Sananikone's and the merchants out of business by stopping their high profits. Merchant profiteers would leave Laos and by ceasing to tie the kip to

the U.S. dollar, a tie imposed by Americans themselves, price stability could be obtained for ordinary Laos.

Sources note that in certain Laos concerns where proprietors have not felt it necessary to convert their kip profit into dollars, prices remained steady. Sources say much of Laos' imports are unnecessary luxuries which the country only buys because of the U.S. AID policy of soaking up kip with imports in the first place.

The U.S. Embassy fears the Sananikones would retaliate with a coup against Souvanna, but diplomats say the U.S. could prevent this because it pays the army. The Lao budget deficit, which equals the amount of the exchange fund, would be overcome by paring war costs from it and putting them into U.S. military aid, where the money is not stolen, and the U.S. could avoid the blame from ordinary Lao for the cost of living mess.

Diplomatic disgust stems not just from the fact that the FEOF doesn't work, but from revelations of FEOF corruption in the Lao vernacular press.

Vientiane's prestigious Satlao newspaper this week revealed the fund is losing \$3,000 per week because government officials are drawing money for holidays abroad, ostensibly for medical treatment by forcing physicians to falsify documents.

Also, the Lao commission which oversees documentation for imports takes 10 percent rakeoff from merchants to process their papers quickly, a tariff which the merchants pass on to the Lao consumer.

[The Baltimore Sun, Aug. 19, 1972]

IN CAMBODIAN ARMY—CORRUPTION THWARTS AID

(By Arnold R. Isaacs)

Phnom Penh, Cambodia.—Despite massive American aid, the Cambodian Army, after 2½ years of war, is still far from an effective fighting force.

Its defenders say no more could be expected of an army that has expanded, under wartime conditions and facing a better-armed and more experienced enemy, from a parade-ground force of 35,000 to a current strength, at least on paper, of 220,000.

\$2,000 A SOLDIER

Critics charge that incompetent, corrupt leadership at all levels has prevented United States aid from doing much good, has cost needless lives, and has robbed Cambodia's soldiers of their most precious asset—a fervent, if naive, desire to drive the North Vietnamese and Viet Cong from their territory.

U.S. military aid has added up to an estimated \$390 million since the Cambodians first went to war, wearing sneakers and riding soft-drink trucks, in March, 1970. This amounts to nearly \$2,000 for every soldier.

GUNS FALL SILENT

But the U.S. has not been able to imbue effective leadership or the type of organizational ability that modern war requires.

"The officer corps is no damn good," tartly remarked a Western diplomat. And it seems clear that the offensive spirit of 1970 has all but vanished.

At a forward Cambodian position along Highway 1 to Saigon, the Army's 105-mm. howitzers fell silent after a single enemy recoilless rifle round slammed into the earthworks around the command post. "If we don't shoot," an officer said, a little sheepishly, they don't shoot."

The decline in morale reflects the course of a war which Cambodians entered with unrealistically hopeful expectations and which has now dragged on for 2½ years with no major victories at all.

HODGE-PODGE OF WEAPONS

"They were naive," one foreign observer said. "They thought the Americans were the same Americans of 1963, that they would rain

down money, soldiers, and so on. They didn't know Americans have changed since 1963."

Although a large measure of U.S. aid goes to supply small arms and ammunition, units in the field still carry a bewildering hodge-podge of weapons.

At one battalion headquarters at the front line along Highway 1, 47 miles southwest of Phnom Penh, the troops were armed with four different weapons requiring three different types of ammunition—American M-16's, obsolete M-1 carbines, Soviet and Chinese AK-47's, and Chinese semi-automatic rifles. The Russian and Chinese arms are left over from the prewar days when the two Communist powers sent supplies to Prince Norodom Sihanouk's regime.

If the creaky supply system works—and it is a big if—Cambodian units in the field usually seem to have enough firepower. There is virtually no supply system for anything else, however. Except when they are actually in combat, and often not even then, troops are not issued rations. Instead they are given a little more than 15 cents a day in addition to their regular pay to buy food, cigarettes, soap and other daily necessities.

It is a system that sends cash, rather than supplies, down the chain of command, and it invites corruption. The number of officers living in expensive villas and driving late-model luxury cars is evidence that the invitation is often accepted. There is hardly a battalion or brigade command post without a gleaming white or pearl Mercedes parked among the olive-drab military vehicles.

No one knows how many "ghost soldiers" there are—names kept on the rolls so officers can collect their pay—but some unofficial estimates are that the Army's actual strength is nearly 50,000 less than its strength on paper. Late last year, the high command announced it was conducting a census to determine how many men were actually serving. But no results were ever announced.

There is no system of allotments for soldiers' families, and as a result, wives and children camp as close to Army positions as they can, even at the front lines.

"They have no choice," an officer explained, waving at the clusters of flimsy shacks along Highway 1 just outside his position. "If they cannot be with their husbands, how can they get money to eat? And besides, it is cheaper for the soldier, too, to eat with his family."

Some unit commanders, trying to clear their areas of civilians, attempt on their own to send money back to the families, but this is rarely possible.

The presence of civilian dependents inevitably slows down military operations. They often become casualties when positions come under attack—at the route 1 command post, one lieutenant had been trying for a week to lead his company out to recover the body of his wife. The pace of a unit on the march is slowed to the walking speed of the children.

The dependence of military units on local markets means the Cambodian Army is largely tied down to the main roads and populated areas, since they usually have no supplies to operate in open country. As a result, in the contested regions, Communist forces have virtually free movement through the countryside, avoiding only government enclaves around the principal towns.

It is not only food that soldiers must buy on the local markets. There are not enough uniforms to go around, or boots—one commander reported being issued 600 pairs of new American combat boots for his brigade but, he said, most were too large for the slight Cambodian soldiers and were useless.

A thriving black market, supplied partly from stolen American supplies and partly from uniforms and other material sold across the border by the far better-equipped South Vietnamese, fills the gap, but at considerable cost to the Cambodian soldier.

"This cost me 700 riels," one soldier said,

pointing at his American fatigue uniform. The sum is equivalent to about \$4. "And the boots," he went on, "1,300." Luckily, he grinned, he could wear large boots—if he had to buy a smaller size, which is in greater demand, he would have had to pay even more.

The amount comes to more than half a private's monthly pay, which is based on 2,500 riels and may go up to 4,000 with family allowances.

[From the Washington Post, Sept. 4, 1972]

CAMBODIA'S SOLDIERS STILL QUIT FIGHTING AT DINNERTIME

(By Thomas W. Lippman)

PHNOM PENH, CAMBODIA.—Two years after it first confronted the reality of modern warfare, the army of Cambodia remains a poorly trained and ill-equipped organization unable to seize the initiative in its struggle against North Vietnam.

Cambodian officials, ordinary soldiers and foreign analysts interviewed here agreed that corruption, inefficiency and political interference pressure from the Communists, have hindered the army's development into an effective fighting force and may have prevented it altogether.

There is also a widespread feeling that this is a war Cambodia does not want and cannot win, no matter what the army achieves and that the country is at the mercy of international forces it cannot control. Under those circumstances it is difficult to sustain the army's morale.

Even Chang Song, the spokesman for the army high command, wrote the other day that "The Khmer Republic is locked in a battle in which she has all to lose and nothing to gain."

Although it is accepted by military and diplomatic sources here that the North Vietnamese have no intention of trying to capture Phnom Penh, it is also agreed that they can do pretty much what they want in the rest of the country.

Six of the seven principal highways linking Phnom Penh with the provinces are cut, at distances ranging from 25 to about 100 miles from the capital. On one of them, Highway 5, Communist troops have blown up two bridges and seized control of the road at three other places, cutting off Phnom Penh from its rice supplies in Battambang province. The seventh major highway Route 4 to the seaport of Kompong Som, is open only to military convoys.

IN VIETNAM'S IMAGE

Phnom Penh lives with the nightly rumble of artillery. The countryside looks more and more like Vietnam, dotted with ruined towns, shattered bridges and abandoned farms. Except for the capital and its environs, already heavily attacked by rockets once this year, and the province of Battambang in the Northwest, Communist troops hold or are threatening most of the country.

Almost everything north and east of a line formed by Highways 6 and 7 remains in North Vietnamese hands and there is no prospect that the Cambodians can get any of it back on their own.

In what some sources viewed as an effort to discourage participation in Sunday's National Assembly elections, the estimated 43,000 North Vietnamese troops and 30,000 Khmer Rouge, or local guerrillas, have staged a new round of heavy attacks in central and south-eastern Cambodia for the past month. The army has had its hands more than full coping with them.

A major counteroffensive last December in an attempt to clear Highway 6 and link up with the town of Kompong Thom ended in disaster, and no more such efforts are likely. The army's role is now entirely defensive and even in that task it has relied heavily on South Vietnamese and U.S. support.

"In my 18 months here," a Western military analyst said in an interview, "I have seen no situation where the Cambodians were able to clear major opposition on their own. In a major difficulty, they do not have the capacity to save themselves."

The best recent example of his point was the battle for the ruined provincial town of Kompong Trabek, 45 miles to the south-east, where the Cambodians were confronted by tanks for the first time in the war. It took a two-week effort by South Vietnamese rangers, in addition to heavy U.S. air support, to clear the North Vietnamese out.

The victory claimed by the Cambodians was more symbolic than real anyway, because there is nothing left of the town and the enemy is still in control of the countryside beyond it.

BRIDGE REPAIRS

The bridge that carries Highway 1 into the town was blown up during the fighting. A dozen Cambodian soldiers in their undershorts were swimming around in the river there last week trying to build a temporary footbridge out of rope, logs and bamboo poles. The army had no engineering unit available to put in a vehicular bridge—a task that the South Vietnamese routinely accomplish almost overnight.

The most optimistic appraisal of Cambodian military performance encountered here this week was that of a high-ranking member of the 74-man U.S. Military Equipment Delivery Team. All team members incidentally, wear civilian clothes as part of the effort to avoid any show of U.S. military involvement here. The officer said he "would not want to say they're a juggernaut," and predicted "tough times over the next few months," but said that "in the end they will come out of it."

Even that officer, however, said that "they can't whip North Vietnam" and are dependent on political and military developments they cannot control.

LONG JOURNEY

No one doubts that the Cambodian army has come a long way from the 32,000-man force that existed when Prince Norodom Sihanouk was overthrown and war with North Vietnam erupted in 1970. It was, as Chang Song put it, "a parade ground army" that was "obsolete, under-sized and eccentrically equipped."

Authoritative figures on the current strength of the army are hard to obtain. The Cambodian put it at 200,000 and increasing. The gloomiest Western analysts say it peaked at less than that a year ago and has now dropped to about 125,000. The Americans use a figure of 170,000.

WEAPONS GRABBAG

At the start of the war, the army was equipped with some Chinese weapons and a grabbag of leftover French, British and American weapons from World War II. As its early battles with the North Vietnamese showed, it deserved its reputation as a "shower shoe army" unprepared for fighting. Over the past two years the United States has supplied most of the soldiers with 16-mm. rifles and has set a goal of making the army a fully equipped light infantry. That means no heavy artillery and no tanks but all the other accoutrements of modern warfare. Mortars, grenades, communication equipment, automatic weapons and antitank guns.

The United States had also tried to set up the army's first real training program, although members of the U.S. team here are barred from participating in any such exercise and the training is done abroad. Uniforms, boots and personal gear such as helmets and canteens are still in short supply. Then Cambodian soldiers standing in a group will be wearing ten different out-

fits, ranging from crisp new camouflage fatigues to U.S. leftovers from Vietnam with the name and insignia of the original GI owner still on them. Some will have canteen, knife and entrenching tool, others will not. And there are still soldiers wearing shower shoes on duty.

DEEPER TROUBLES

The army's real troubles, however, go far deeper than appearance. They include:

Lack of training and absence of administrative talent. Cambodia has no basic combat training facility as it is known in the United States. Its soldiers are sent to South Vietnam, Thailand, Australia, Indonesia, the United States and other countries for training. Because the army had to expand so quickly and fight at the same time, there are still units in the field that have not been trained at all. As for the officers, "some of them are tough," a high-ranking American said, "but others aren't worth the powder to blow them up."

Manpower and recruitment problems. There is no draft. All soldiers are volunteers. The official reason is that none is necessary because the ranks are kept filled by young anti-communist patriots. Others say many young men join because their fields and villages are gone and they need jobs. The most pessimistic say that a draft would be unenforceable because of governmental ineptitude and would be useless anyway since the country has neither the equipment nor the money to handle any more soldiers. As it is, boys of 13 and 14 are common in the ranks and there are reliable reports that recruitment has dwindled to a trickle.

Primitive logistical support and living conditions. The soldiers' families live with them in the field. "You can imagine what that means when the enemy artillery starts coming in," one analyst said. Since neither living quarters nor food are provided, the soldiers and their families spend a lot of their time constructing huts and foraging for food. "You ought to see them when 5 P.M. comes," said a diplomat who has spent time with field units. "They stop fighting because they have to catch chickens and start their cooking fires."

Pay roll corruption. The monthly salary for an ordinary enlisted man starts at 2,500 riels, about \$15 at the official rate of exchange. But delivery of the cash is erratic. Several soldiers interviewed on payday were grumbling because they had not received their money and their families needed food. There have been reports of entire battalions leaving the front in such incidents.

Several reliable sources also said that commanders, who distribute the payrolls, withhold news of deaths and desertions so they can draw for themselves the money intended for those troops.

One well-informed American familiar with the military situation said that such tales should be taken "with a grain of salt," but optimism about most things here appears to be higher at the U.S. embassy than anywhere else.

GENTLE PEOPLE

In addition there remains the fact that the Khmers are basically a gentle, superstitious and unwarlike people, far more confirmed in their Buddhist beliefs than the Vietnamese, to whom war is an alien occupation. The euphoria that swept the country with the overthrow of the monarchy two years ago has long since evaporated and an air of lassitude has returned.

There is a wide range of opinion here about what the North Vietnamese objectives are in their current campaign. Among those mentioned are hampering the elections, solidifying their control over base areas used by their troops in South Vietnam, stirring new antiwar sentiment in the United States and bringing the current Cambodian gov-

ernment to its knees in an attempt to gain Khmer Rouge representation, if not domination, in Phnom Penh.

But whatever the objectives are, everyone except the Americans and the leaders of the government seem convinced that the Cambodian army can do little to keep them from being achieved.

[From the New York Times, Sept. 7, 1972]

SAIGON DECREES END OF ELECTIONS ON HAMLET LEVEL—UNDER NEW SYSTEM NEARLY ALL OF COUNTRY'S OFFICIALS WILL BE APPOINTED

(By Craig B. Whitney)

SAIGON, SOUTH VIETNAM, Sept. 6.—The South Vietnamese Government, by executive decree, has abolished popular democratic election of officials at the most basic level—in the country's 10,775 hamlets.

Under the new system, which is going into effect now and will be completed within two months, nearly all the country's administrative officials—from the province chiefs down to the hamlet level—will be appointed.

The decree ends six years of popular election at the grassroots level of the hamlets. It was issued, without publicity, on Aug. 22 by Premier Tran Thien Khlem. It orders the 44 province chiefs, who are military men appointed by President Nguyen Van Thieu, to reorganize local government and appoint all hamlet officials and finish the job in two months.

AIDES TO BE APPOINTED

The new system calls for either two or three officials in each hamlet, depending on its population. There are the average Vietnamese citizens' closest contact with his government—the men he complains to, goes to when he needs help, or hears from when the Government wants to enforce its laws.

At the next highest level, the village—villages in Vietnam are administrative groupings of hamlets, not villages in the American or European sense of the word—village chiefs and their staffs have been elected by provision of the South Vietnamese Constitution. But now, according to the Premier's decree, their deputies and staffs will no longer be elected. They, too, will be appointed by the province chiefs.

In the space of a few months—since President Thieu began ruling by decree in June—he has centralized power in his hands and through men appointed by him, to a degree unknown in Vietnam since the Americans came here in strength in the nineteen-sixties and gave South Vietnam the forms of democratic government and popular elections.

Since 1967, the country has been governed by an elected President and a two-chamber legislature. President Thieu, who ran alone last Oct. 3 and won 94.3 per cent of the vote for his second term, controls a majority of the legislators in both houses but has been ruling by decree since June 27. On that night he wrested from the Senate authority to govern by fiat for six months in the fields of security, defense, economy and finance.

But it is clear, from this latest decree as well as from earlier ones by President Thieu that placed restrictions on the South Vietnamese press and stiffened the penalties for common crimes and for dereliction of duty, that the forms of democratic government are being weakened at a time when the United States is pulling troops out and, correspondingly, losing influence here.

SPEECHES NOT TRANSLATED

President Thieu has been saying as much in recent speeches, which his Government has not been translating into English or disseminating to the foreign press.

For example, on Aug. 11, in a speech in Quinhon, capital of Binh Dinh Province, which the United States Government monitored and then translated into English, he said:

"I have never denied independence and democracy. As President of South Vietnam I have always observed democracy. However, if I [may speak as] a citizen, I must complain that our Government has allowed us to enjoy too much democracy too soon. This is like—if you will excuse me for my comparison—a small baby that is given an overdose of medicine or like a weak person who takes up physical exercise so that his health cannot endure.

"I have always respected the people's democratic rights and freedoms as basically outlined in our Constitution. However, these rights and freedoms must be properly practiced, such as simultaneously respecting the Constitution and responding to the demands of our nation."

"WE ARE TOO COMPLACENT"

"The Communists try to infiltrate our anti-Communist political parties, which are strong and which they cannot topple," Mr. Thieu said. "The Communists try to infiltrate our anti-Communist religions and our political parties. The Communists are now spending money buying newsmen, publishing newspapers and taking advantage of the disorderly and broad democracy and freedom in the south. When an election is held, the Communists try to benefit from it."

In a key passage he told his audience "Our political parties are still in small number and are not united; second, we are too complacent and are often disunited, and third, the most important is our disorderly democracy. Our democracy presents many gaps."

Mr. Thieu has often cited the extraordinary situation created by the Communist offensive, which began at the end of last March, as justification for restrictive measures. But the move to abolish election of hamlet officials and centralize local administration under the appointed province chiefs was in preparation even before the offensive.

An American Government interpretation of the Premier's decree says, for example, "These changes have been in the wind for the past several months" and were noted by the Americans in reports of Feb. 28 and March 7.

It says, of the effect of the decree on the only local officials who will continue to be elected, "The village chief, though still elected, will be in a much less commanding position since the officials who work under him will now be appointed by the province chief."

The province chiefs appointed by the President are military men—usually colonels—who owe their jobs to Mr. Thieu's patronage and are personally loyal to him. Often they do not even come from the provinces they serve. Last year Mr. Thieu said he intended to gradually put into effect the popular election of province chiefs beginning in 1972 but this has not happened.

"GUIDELINES" ALSO ISSUED

Along with the decree, Premier Khlem also issued to the country's province chiefs "general guidelines for the explanation and implementation" of it. It says, in the American Government's translation, "In sum, the administration in villages and hamlets is advanced but not quite adequate, and it doesn't satisfy the needs of the nation in the present phase of the struggle against the Communists."

"You must use your authority as fixed in Articles 3 and 6 of the new decree to screen the ranks of village and hamlet officials including hamlet chiefs because now they will be appointed by you. You must release those who are unqualified, negative, or who have bad behavior.

"In choosing which village officials and hamlet chiefs to keep," the Premier's explanation says, "you have to consider his anti-Communist achievements, services and train-

ing courses in national or local training centers.

"Especially to cope with the present situation, if localities don't have enough personnel and there are no civilian candidates after the screening, I will approve the use of popular forces, regional forces [militia] including lieutenant officers, in the village and hamlet administration."

The changes in the village administrations—there are 2,130 villages in South Vietnam—limit the number of officials per village to a maximum of eight, including the elected village chief.

The decree also provides that, where there is a police station in a village, the police chief will assume the function of the formerly elected deputy village chief for security, an important post because it includes such powers as determining who in the village may be a Communist sympathizer or a member of the Vietcong.

The Premier drew on Article 70 of the Constitution for his authority to issue the new decree. It provides that "the organization and regulation of local administration shall be prescribed by law."

Premier Khlem's explanation to his province chiefs says that, since the promulgation of such a law was still pending, a draft having been sent to the National Assembly, he was now issuing a decree superseding the one in 1966, which established the election of hamlet and village officers.

The Premier's measure goes beyond instructions that President Thieu issued to the province chiefs a few weeks ago. Then he told them that they could replace elected village and hamlet chiefs at their discretion.

The reason, according to American officials, was the discovery during the offensive this year that many locally elected hamlet chiefs were in fact Communists, who voluntarily provided valuable assistance to enemy forces.

[From the Washington Post, Sept. 8, 1972]
UNITED STATES ADMITS END OF VIET HAMLET VOTE

(By Stanley Karnow)

The Nixon administration has confirmed with apparent embarrassment that South Vietnamese President Nguyen Van Thieu has abolished the electoral process in his country's more than 10,000 rural hamlets.

Reacting to the Thieu decision, which effectively ends six years of democratic activity in South Vietnam's lowest administrative levels, U.S. State Department spokesman Charles W. Bray III said yesterday that the United States was not consulted in advance about the move. He added that the U.S. government is "not responsible for the internal affairs" of foreign states.

But another U.S. official, who declined to be identified, described the decree as "a step backward in terms of representative institutions" in South Vietnam.

The Saigon government's decision, which was issued without publicity by Premier Tran Thien Khlem on Aug. 22 and revealed yesterday by the New York Times, seemed to rebut assertions by Thieu that he has "always observed democracy."

The move also dealt a blow to contentions that the Thieu regime is encouraging "self-determination" while the Communist threaten totalitarian rule.

Bray speculated at his press briefing yesterday that the North Vietnamese offensive against the south was "a major factor in prompting Thieu to put an end to hamlet elections."

"The North Vietnamese are using a whole range of unconventional warfare," Bray said. "I assume that in view of this present danger, the South Vietnamese felt constrained to do what they could to provide stability at the extreme local level of the country."

Bray expressed the hope that "the restrictions adopted in this emergency could be

relaxed" when the situation in South Vietnam is "somewhat more normal."

Other U.S. sources voiced the belief that Thieu may have made his move because he anticipates the possibility of a cease-fire and is "trying to put himself in a better position."

While acknowledging that the decree would tarnish Thieu's public image internationally, one of these sources suggested that conditions on the ground inside Vietnam would probably not change.

The source explained that hamlet chiefs in areas under Saigon government control have tended to be elected if they enjoy the favor of senior province officials rather than on the basis of popular choice.

Under the new system which is going into effect, nearly all of South Vietnam's administrative officials will be appointed. The decree orders the country's 44 province chiefs, all of whom are officers responsible directly to Thieu, to reorganize local government and appoint hamlet officials.

Elections will no longer take place in villages, which are groupings of hamlets. Village chiefs were formerly elected but, like their counterparts at the hamlet level, they will henceforth be appointed by province chiefs.

Thieu, who won re-election in October in an uncontested election, has been ruling by decree since June 27. Within recent months, he has been tightening restrictions on press freedoms.

During the past few weeks, while denying that he is seeking to stiffen his rule, Thieu has explained that South Vietnam cannot afford an excess of democracy. In a speech delivered on Aug. 11 in the Binh Dinh province capital of Quinhon, for example, he said:

"I must complain that our government has allowed us to enjoy too much democracy too soon. This is like . . . a small baby that is given an overdose of medicine or like a weak person who takes up physical exercise so that his health cannot endure."

Thieu went on to argue that the Communists were infiltrating South Vietnamese political parties, religious groups and newspapers. "When an election is held," he added, "the Communists try to benefit from it."

[From the New York Times, Sept. 10, 1972]
VIETNAM: DEMOCRACY WAS VERY DISORDERLY
(By Craig R. Whitney)

SAIGON.—"I abide by democratic principles," President Nguyen Van Thieu told a military audience here recently, "but the more open is democracy, the more disorderly it is, and the more fissures it will leave open to Communist penetration."

Over the past two months, President Thieu, who has been governing by decree since he pushed a special-powers bill through the South Vietnamese senate after curfew late one night in June, has been moving to cement those fissures.

His latest move was becoming apparent last week. Officials began putting into effect another executive decree which gives President Thieu's hand-picked province chiefs the power to appoint and dismiss all the previously elected officials of the 10,775 hamlets in the countryside. The effect was to abolish popular elections at the most basic local level and thus further reduce citizen participation in the democratic processes.

For the South Vietnamese peasant, hamlet officials are the closest governmental contact in his everyday life. He goes to them when he needs governmental assistance, permission or advice; and he hears from them when the Government needs taxes, professions of loyalty or information.

An American diplomat observed of the development, "The American-inspired democracy building era is all over." But to many, he was slightly off the mark: What is all over is the era of United States control over the war machine the Americans created in Vietnam.

Democracy is a Western concept not fa-

miliar to any Oriental society. President Thieu, it seems clear now, only put up with it as long as he had to when the Americans were so numerous, so generous, and therefore so powerful here. Now that they are leaving, he is confident that his benefactor, President Nixon, will be re-elected, no matter what happens in Vietnam, and so he is moving to rid the country of "disorderly democracy" because, to him, it is dangerous.

The official reason given by the decree on appointment of hamlet officials was "to unify the chain of command." This it does, since the lines of authority in the country now flow uninterrupted down from President Thieu through the province chiefs he appoints to the village and hamlet officials they name.

The decrees on the hamlets and rule by executive fiat were only the latest signs that the forms of democratic * * * previous decrees, but the plan to do away with election of hamlet officials was in the works as early as last February, before the offensive started.

The only people who really were embarrassed by all of this are American officials who have been pretending that South Vietnam is a democracy. It never was before the Americans arrived and never was when they were here in force. But, presumably to try to win some semblance of popular support for the war at home, the Johnson and Nixon Administrations in the 1960's portrayed it as democracy abuilding and forced upon the military regime the forms, if not the substance, of a freely elected civilian government.

A senior American in Saigon has occasionally described the South Vietnamese constitution, adopted in 1966 and 1967, as "grafted" onto Vietnamese society by the Americans. It has a bicameral legislature, a supreme court, and a popularly elected president—all only on paper. For these institutions have all been superfluous since Mr. Thieu's election last fall. In that election, Gen. Duong Van Minh and former Vice President Nguyen Cao Ky refused to run because they believed Mr. Thieu was rigging the elections against them. Mr. Thieu engineered a 94.3 per cent victory for a second four-year term.

On things Vietnamese and political at least, Mr. Thieu now cares so little for American opinion that he did not even inform the United States in advance of his decision to decree democracy in the hamlets out of existence, according to the State Department in Washington. "We have a free hand now, finally," one South Vietnamese palace adviser told a visitor recently.

Why get rid of even the pretense of democracy? Mr. Thieu explained, in a speech on Aug. 11, before the decree was promulgated: "If our country were a secure, peaceful and prosperous country like the United States, all of our democratic rights and freedoms could be fully observed without any trouble at all. However, our country is still on the path of development and the Communists are blocking our way and interfering everywhere. We can find them everywhere, under our beds, under our ancestors' altars, behind our backs, and even among our ranks."

[From the Arkansas Gazette, Mar. 19, 1972]
UNITED STATES TO TRAIN TAIWANESE IN
SUBMARINES

WASHINGTON.—Taiwanese sailors will start submarine training in the United States this month in what may be a prelude to the Taiwan navy's acquiring its first United States built submarine.

The move could arouse protests from senators that any new forms of military aid to the Chiang Kai-shek government could endanger United States relations with Communist China.

Pentagon officials said the Taiwanese had asked the United States for a submarine to be used in training.

The Taiwan government has not asked for any combat submarines, officials said.

Defense authorities said the matter has been under consideration for some time but that no final decision has been made on providing an old diesel-electric boat as "a target submarine for training purposes."

However, disclosure that 82 Chinese Nationalist naval officers and enlisted men will start 26 weeks of training at the United States Navy's submarine school in New London, Conn., March 27 suggests that the request will be approved.

Officials said such a craft could be taken out of mothballs and sold to Taiwan as surplus, or it could be loaned to the Taiwan government.

Specialists said the loan approach would require congressional authorization, and it was recalled that back in 1970 Senate opposition blocked the Nixon administration's proposed loan of three submarines to Taiwan.

Under this year's military aid program, the administration requested a total of \$67.5 million in outright grants and "excess defense stocks" for Taiwan, with another \$45 million in military sales credits.

The training of Chinese Nationalist sailors in operation of a diesel-electric submarine was described by the Pentagon as "solely to help improve the defense capability of the Republic of China military forces."

Pentagon officials said there was no friction between the Defense and State Departments over the question of providing a training submarine.

State Department sources indicated they were opposed to providing any combat submarines.

Authorities said United States submarines of the Seventh Fleet used to serve as training targets for Chinese surface craft during exercises, but that this no longer is the case.

While Nationalist China does not yet own a submarine, Defense Secretary Melvin R. Laird reported to Congress last month that the Chinese Communist navy has more than 40 diesel-powered attack submarines, most of Soviet make.

Recently, United States intelligence received reports of a new submarine of Chinese design based in Shanghai.

[From the Washington Post, Mar. 28, 1972]
UNITED STATES WILL PAY \$9 MILLION ON
MALTA RENT

The United States will pay about \$9 million of the annual \$36 million rental to retain British bases on Malta and is also considering economic aid for the Mediterranean island, State Department officials said yesterday.

Both innovations in American policy for Malta were justified by U.S. officials on grounds that continued Western use of Malta's naval and other facilities is necessary to deny the possibility that the Soviet Union or its allies will gain access to them.

In months of bargaining with the British, Malta's Prime Minister Dom Mintoff dangled the implied threat that he would turn to the Soviet Union if his terms were rejected. The United States and other NATO nations agreed to pay a share of the cost.

State Department press officers Charles W. Bray said that in addition to the U.S. share of the base fees, Washington agreed "to send a survey team to Malta to examine the possibility of whether the United States might play a useful role in providing economic assistance on a bilateral basis."

[From the Washington Post, Apr. 1, 1972]
GREECE'S JET PURCHASE WORRIES
TURKISH REGIME
(By Dan Morgan)

IZMIR, TURKEY, March 31.—Turkish officials say they are concerned that Greece's purchase of 36 U.S. F-4 Phantom jets could put their country at a disadvantage in the event of new tensions over Cyprus.

There is fairly widespread concern in Ankara that the purchase, announced yesterday in Washington, could upset the military balance between NATO allies Greece and Turkey, which went to the brink of war over Cyprus in 1964 and in 1967.

Turkey does not feel economically strong enough to compete in the arms race with the wealthier Greek regime and the United States has made clear that it will not give away Phantoms as part of the military assistance program.

This has placed Ankara under pressure from some Turks who believe that the military potential of both sides weighs as a political factor in the dispute.

Both Greece and Turkey have been pressing for a settlement that would enable Greeks and Turks on Cyprus to end their long standing differences.

MAIN PROTECTOR

Despite the presence of a U.N. peacekeeping contingent on Cyprus, most of the minority Turkish look to the Turkish army as their main protector.

In military terms, Greece's possession of the F-4 will enable it to support Greek army units in Cyprus with long-range aircraft that are overwhelmingly superior to anything the Turks can muster. The estimated \$5 million per plane is generally seen as prohibitively high.

NATO headquarters has been pressing both countries to modernize their air forces as a deterrent to the Soviet buildup on the southern flank of the alliance.

Lt. Gen. Richard H. Ellis, commander of the 6th Allied Tactical Air Force in Izmir, said today that the Greek purchase was "great" from a military standpoint.

"They need an aircraft that can do the job for the competition they're up against," he said. "We'd like to have F-4s for Turkey too. But it's a matter of economics."

The United States maintains a single squadron of its own Phantom aircraft in southern Turkey. American defense strategists contend that the Soviet naval buildup in the Mediterranean could make U.S. air power vulnerable by exposing the U.S. carriers to a quick knockout punch by Moscow's missile-firing cruisers. They maintain that local issues such as Cyprus cannot take precedence over the broader NATO requirements.

U.S. officials said yesterday Greece would pay about \$2.5 million down on each plane, with the remainder financed through a credit under the foreign military sales act.

NATO REQUIREMENTS

The NATO military requirements for Greece and Turkey are set by the organization's defense council, in which the United States has a predominant voice and from which France is absent.

While cheaper modern aircraft, such as the French Mirage and the F-5 clear weather fighter, are also available, American officials say the "logical" weapon with which to satisfy the NATO recommendation is the Phantom.

Greece has been stepping up its purchase of equipment as the American program of outright gifts has declined. For instance it has supplied itself with Huey helicopters, French AMX-30 medium tanks and now Phantoms in this fashion.

PRESSURE FOR MODERNIZATION

Turkey's armed forces have been placed at a disadvantage by the NATO pressure for modernization because of the country's weaker economic position. It also lacks a significant local arms industry.

Turkey's armed forces are almost totally supplied with U.S. and, to a lesser degree, West German equipment. Turkey's per capita income is about half Greece's but it spends a larger proportion of its national income on defense. Turkish sources also con-

tend that the U.S. aid to Greece is greater than appears on paper.

Gen. Ellis said military relations between Greece and Turkey were "very healthy." Next month, a Turkish air squadron will go to Greece for exercises. Earlier this year, Greek and Turkish units under the NATO command staged joint maneuvers in Thrace.

[From the New York News, Sept. 15, 1972]
UNITED STATES DROPS PIASTERS FROM HEAVEN ON NORTH VIETNAM

SAIGON, Sept. 14.—American planes are showering North Vietnam with counterfeit currency in a new move in the Vietnam war, it was disclosed today.

The bogus North Vietnamese notes, printed in several denominations, are being dropped as part of stepped-up psychological warfare operations.

A similar project, proposed during the administration of Lyndon Johnson, was turned down. Instead a crude photo facsimile of a North Vietnamese piaster on one side of a leaflet with a propaganda message on the other side was authorized.

The new drops are radically different. They consist of exact copies of North Vietnamese banknotes which could easily pass for the real thing. Attached to each note is a stub bearing a propaganda message which urges that North Vietnam spend its money for peaceful purposes instead of financing the war against South Vietnam.

Millions of counterfeit notes have been dropped, with more on the way. In time, they could disrupt North Vietnam's already shaky economy and create plenty of headaches for the Hanoi regime.

The Communists have launched a drive urging the people to destroy the notes. But money, falling from the heavens, may prove too great a temptation for the North Vietnamese peasants.—Joseph Fried

DEFENSE DEPARTMENT RAINMAKING PROJECT IN THE PHILIPPINES

Mr. FULBRIGHT. Mr. President, the Philippines were recently struck by devastating floods and the Committee on Foreign Relations, responding to the disaster, authorized \$50 million for disaster relief and rehabilitation efforts in the pending bill.

In the last few days the General Accounting Office sent to the committee a report on their investigation of the military assistance program in the Philippines. Unfortunately the GAO report is classified. However, the State Department is being asked to sanitize it in order that the valuable GAO findings can be made public.

Because this bill contains \$50 million for flood relief I bring to the Senate's attention an interesting unclassified excerpt from the Department of Defense comments on the GAO's report. The Defense Department described a research program for rainmaking which began in 1969 and was carried out by the U.S. Navy and Air Force in the Philippines.

During the course of Gromet II, as the rainmaking project was called, "personnel of the Philippines Air Force and Weather Bureau were trained to carry on such a program in future years."

The results were described this way:

Gromet II was a successful project in all respects. The desired research data was collected by DOD, and the drought in the Philippines was alleviated, resulting in a considerable increase in agricultural production. In 1970, those PAF (Philippines Air Force) and PHIL weather personnel trained during Gromet II conducted their own PHIL-funded

program which resulted in an agricultural product increase estimated at approximately \$50 million.

I ask unanimous consent that the entire text of this section of the Defense Department's comments be printed in the RECORD.

One would assume that with such success the program was probably continued and expanded. It raises the interesting question of whether there is a connection between the experimental rainmaking program initiated by the Defense Department and the flood disaster in the Philippines this summer.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GAO REPORT DATED SEPTEMBER 18, 1972, "MILITARY ASSISTANCE AND COMMITMENTS IN THE PHILIPPINES," APPENDIX II, PAGE 67

b. (U) Rainmaking Project—The United States Air Force (USAF) provided personnel and equipment to assist the Government of the Philippines rainmaking project. The project grew out of a request from the Government of the Philippines to the State Department for assistance in alleviating a drought situation in the Philippine Islands. The Department of State, in turn, requested DOD assistance, and on 19 April 1969 the Chairman of the Joint Chiefs of Staff, in CM-4128-69, reacted to a 17 April 1969 SECDEF memorandum and directed implementation of the program with USAF as DOD executive agent. Since the actual cloud seeding operations involved both USAF and U.S. Navy (USN) resources and required coordination with the Department of State, the American Embassy, Manila, provided overall direction. Scientific direction of the project was provided by the USN.

(U) The Department of Defense Environmental Research Center prepared and executed a research project in the Philippines known as GROMET II. Two USAF C-130 aircraft were used to perform the actual seeding under supervision of Environmental Research Center personnel from the Naval Weapons Center. During the course of the seeding experiments, personnel of the Philippines Air Force and Weather Bureau were trained to carry on such a program in future years. The project was carried out as a phase of an already on-going DOD Environmental Research Project involving the use of nucleating agents to stimulate precipitation.

(U) Gromet II was a successful project in all respects. The desired research data was collected by DOD, and the drought in the Philippines was alleviated, resulting in a considerable increase in agricultural production. In 1970, those RAF and PHIL weather personnel trained during Gromet II conducted their own PHIL-funded program which resulted in an agricultural product increase estimated at approximately \$50 million.

Mr. FULBRIGHT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, would the distinguished chairman of the Committee on Foreign Relations be willing to answer a couple of questions?

Mr. FULBRIGHT. Yes.

Mr. HARRY F. BYRD, JR. First, I would like to commend the Committee on Foreign Relations for inserting in its report, just as it did last year, a table showing the number of countries to which foreign assistance will be given. It adds up to about 88 different countries. There are 22 countries in Latin America, 16 countries in the Near East and South Asia, 13 countries in East Asia and the Pacific, and 37 countries in Africa.

The point I wish to raise with the distinguished chairman of the Committee on Foreign Relations is the total foreign assistance bill. As I read the figures on the top of table IV, which is a summary of all programs, the next to the last figure on the right is: "Total Military and Economic, Fiscal Year—1973" and the figure is \$9.3 billion.

Is that the budget request? Is that what is being sought by the administration or is that the amount the committee recommended?

Mr. FULBRIGHT. It is the amount requested by the administration.

Mr. HARRY F. BYRD, JR. Then, the figure in the extreme righthand column of \$7.4 billion for fiscal year 1972, I take that to mean that that is what was provided, namely approved by the Congress.

Mr. FULBRIGHT. That is what was provided.

Mr. HARRY F. BYRD, JR. Provided by Congress?

Mr. FULBRIGHT. Yes. The Senator can say that this year's request is \$2 billion more than Congress approved last year.

Mr. HARRY F. BYRD, JR. The request this year is \$2 billion more than the figure approved last year?

Mr. FULBRIGHT. The Senator is correct. That is one of the things I object to. I do not think it should be going up; I think it should be going down.

Mr. HARRY F. BYRD, JR. I thank the Senator. I concur in his point. I thank the Senator for clearing that up for us. I do not think we can justify a \$2 billion increase in foreign assistance.

Mr. FULBRIGHT. I might say that on page 7. There is an explanation of table IV. It makes it clear that the table gives information concerning foreign military aid programs proposed for 1973, both in this and other bills, as well as data on economic assistance programs.

Mr. President, I ask unanimous consent that the explanation from the committee report be inserted at this point.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXPLANATION FROM COMMITTEE REPORT

Table IV gives information concerning foreign military aid programs proposed for FY 1973, both in this and other bills, as well as data on economic assistance programs. This table is included in order to give members of the Senate a more detailed picture of the major elements in the foreign aid program. But it should be noted that this table is not all inclusive. It does not, for example, contain the major costs of supporting military assistance missions abroad, support for international military headquarters, U.S. costs of the NATO infrastructure, the value of property transferred to South Vietnam, and other items adding up to hundreds of millions more in foreign assistance.

Mr. HARRY F. BYRD, JR. Many of the items mentioned by the Senator from Arkansas a moment ago are very indirect costs.

Mr. FULBRIGHT. It depends on your definition of "aid."

Mr. HARRY F. BYRD, JR. This table purports to list as comprehensively as possible the direct cost of foreign assistance, as I understand it.

Mr. FULBRIGHT. The Senator is correct. It is awfully hard to draw these distinctions very clearly. There are always gray areas, but we do the best we can.

Mr. HARRY F. BYRD, JR. This includes economic assistance as well as military assistance.

Mr. FULBRIGHT. The Senator is correct.

Mr. HARRY F. BYRD, JR. And it does not include military sales.

Mr. FULBRIGHT. Only credit sales; not commercial or cash sales.

Mr. HARRY F. BYRD, JR. I thank the Senator.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ROBERT C. BYRD. Mr. President, I will shortly suggest the absence of a quorum. Prior to that time I wish to state that if other Senators have additional amendments to be called up today they would certainly be in order, and the leadership would hope that Senators would come to the floor and call them up. Otherwise, in a short time the leadership will ask that the pending measure be set aside and that the Senate turn to consideration of the unfinished business.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 3987—UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, it being my understanding that this request has been cleared on both sides of the aisle, I ask unanimous consent that at such time as S. 3987, a bill to replace the Vocational Rehabilitation Act, is called up and made the pending question before the Senate, it be subject to the following time agreement, under the usual form: that there be 1 hour on the bill, to be equally divided between Mr. CRANSTON and Mr. JAVITS; that time on any amendment, debatable motion, or appeal be limited to 20 minutes, to be equally divided and controlled, under the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistance legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that on September 21, 1972, the President had approved and signed the act (S. 2969) to declare title to certain Federal lands in the State of Oregon to be in the United States in trust for the use and benefit of the Confederated Tribes of the Warm Springs Reservation of Oregon.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. TUNNEY) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE—ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions:

H.R. 4383. An act to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes;

H.R. 7614. An act to amend titles 5, 10, and 32, United States Code, to authorize the waiver of claims of the United States arising out of certain erroneous payments, and for other purposes;

H.R. 9032. An act to provide for the disposition of funds appropriated to pay a judgment in favor of the Havasupai Tribe of Indians in Indian Claims Commission docket numbered 91, and for other purposes.

H.R. 9135. An act to amend the act of August 19, 1964, to remove the limitation on the maximum number of members of the Board of Trustees of the Pacific Tropical Botanical Garden;

H.R. 10486. An act to make the basic pay of the master chief petty officer of the Coast Guard comparable to the basic pay of the senior enlisted advisers of the other Armed Forces, and for other purposes;

H.R. 13697. An act to amend the provisions of title 14, United States Code, relating to the flag officer structure of the Coast Guard, and for other purposes;

H.J. Res. 135. Joint resolution to authorize the President to issue a proclamation designating the week in November of 1972 which includes Thanksgiving Day as "National Family Week";

H.J. Res. 807. Joint resolution authorizing the President to proclaim the second full week in October of 1972 as "National Legal Secretaries' Court Observance Week"; and

H.J. Res. 1232. Joint resolution designating, and authorizing the President to proclaim February 11, 1973 as "National Inventors' Day."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore.

CONSUMER PROTECTION ORGANIZATION ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, in accordance with the order entered on Friday, I ask that the pending measure, the Foreign Assistance Act, now be laid aside and that the Senate resume the consideration of the unfinished business, S. 3970.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read the bill by title, as follows:

A bill (S. 3970) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAX BENEFITS FOR GRAIN EXPORTERS

Mr. HARRY F. BYRD, JR. Mr. President, the press reports that grain exporters are pressing the Treasury Department for a ruling that would free them from taxes on half the profits made from the sale of wheat to the Soviet Union. If the Treasury rules favorably for the exporters, they would also pay no taxes on half the profits they made on wheat sales to other countries.

Mr. President, this is a very complex matter. It has to do with a provision in last year's statute permitting the establishment of so-called DISC's—Domestic International Sales Corporations—to handle receipts from exports.

I have not had a chance to study that phase of the tax law in detail recently, but I would hope that the Treasury Department would proceed very carefully before permitting tax benefits on the sale of grain to foreign countries. Increased sales of grain, in recent weeks, particularly to the Soviet Union, have meant that there have been tremendous profits made. I have no evidence to suggest that they were not proper profits. I do know that the taxpayers have paid substantial subsidies.

For example, on June 30 there was a 1-cent Federal subsidy on wheat exports. Three weeks ago, that subsidy had climbed to 47 cents per bushel. On September 15, it was 25 cents a bushel. As of last Friday or Saturday, the subsidy was eliminated. But undoubtedly

there have been tremendous profits made on the huge sales of grain to Russia.

I think it is important that those businessmen who participated in those sales—and I do not charge there is anything wrong with such sales—pay their appropriate share of taxes to the Federal Government. As I mentioned earlier, the tax law in regard to the Domestic International Sales Corporation is a very technical and complex matter. The Treasury Department apparently has some leeway in how it interprets the law.

Without expressing any precise view, because I do not feel that I have reviewed recently enough the details of it to suggest a precise ruling from the Treasury, I do hope that the Treasury Department will proceed very slowly and very carefully before, in effect, forgiving, or, to put it another way, making it possible for these grain exporters to pay an income tax on only half of their profits.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistance legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSUMER PROTECTION ORGANIZATION ACT OF 1972

The Senate continued with the consideration of the bill (S. 3970) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. RIBICOFF. Mr. President, we have before us the amendment offered by the distinguished Senator from Alabama, which is referred to as the "amicus" amendment.

The Allen amendment would bar the Consumer Protection Agency from appearing as a party before any Federal agency or court. The CPA would be limited to the mere role of amicus curiae—regardless of how vitally consumer interests might be affected by the outcome of a case. Instead of allowing the CPA to be a vigorous advocate, the amicus amendment would allow the CPA only to review data submitted to Federal agencies by other parties and to comment upon that data. Unlike the parties to the case, the CPA could not present its own witnesses, cross-examine other witnesses, or invoke any of the host of other rights enjoyed by parties in an administrative proceeding. In addition, the CPA would be barred from appealing any administrative decision to the courts, but could only seek reconsideration by the very agency which rendered the decision in the first place.

This amendment has been described by its supporters as a "compromise amendment." But the only thing this

amendment compromises is the vital interests of consumers in having an effective spokesman.

Following is a short analysis of the major arguments made by proponents of the so-called "amicus compromise amendment":

1. That the amendment would give the CPA "more power" in rulemaking and informal activities.

Answer: There is absolutely no need to give the CPA the "last word" in these two areas. What the CPA needs is to have the right to participate as a party where necessary to protect consumer interests, to submit comments in notice-and-comment rulemaking proceedings, and to participate in informal activities. The amendment attempts to make the CPA appear to be "more than equal" to other parties in one trivial respect as a justification for making the CPA drastically less than equal to parties in many vital respects.

2. That the CPA ought to have "less power" in adjudicatory proceedings.

Answer: Adjudications are often as important to consumers in the development and elaboration of general standards as are rulemaking proceedings. Some agencies, such as the FTC, for example, use adjudication rather than rulemaking as a means for developing statements or standards of general applicability. In addition, it is in adjudication that broad principles are applied in particular cases. If rules that have been announced are not enforced, or if rules are interpreted loosely in adjudicatory proceedings, those rules are unlikely to be respected in the future. It is essential that the CPA have the authority to be a party in adjudications.

3. That the CPA should be allowed only to seek rehearing at the agency level and not be allowed a judicial appeal.

Answer: The amendment supposedly aims to avoid one government agency challenging another agency in court which the proponents argue has occurred in only "extremely rare instances."

This argument—as well as the whole rationale for the amendment—are flatly contradicted by a study recently submitted by the administrative law section of the American Bar Association to the ABA House of Delegates. The study urged approval of CPA intervention as a party in adjudicatory proceedings before the courts. The study stated:

Inter-agency litigation over the validity of administrative action has been commonplace since the early days of the Federal administrative process (the study cites dozens of cases) . . .

The interests asserted by the challenging agency have in some cases been proprietary . . . In other instances the challenging agency has sought to litigate pure policy differences . . . In neither type of dispute has the multiplicity of governmental parties appeared to create any difficulties for the courts, which indeed, have welcomed the presentation of all sides in the complex and important matters frequently involved . . .

We therefore conclude that no new problems, either doctrinal or practical, are presented by the proposal to give the CPA the right to initiate or intervene in proceedings for judicial review of other agencies' actions.

Furthermore, existing law explicitly empowers a number of Federal agencies to intervene before other agencies and appeal the other agencies' actions in the courts. A good example is the Agricultural Adjustment Act which authorizes the Secretary of Agriculture to appear

before the ICC and appeal ICC orders. See 7 United States Code 1291.

Every Federal agency already has the inherent authority—in the absence of statutory authority—to initiate or intervene in judicial review proceedings involving the actions of other Federal agencies. The ABA study documents this fact in great detail.

Mr. President, it would be a mockery to limit the CPA—whose purpose is to be an advocate—to the status of *amicus curiae* when all other agencies can become parties.

The *amicus* amendment, by denying the CPA the rights of a party, would prevent the CPA from effectively representing the interests of consumers.

The *amicus*, or so-called "friend of the consumer" amendment, would nullify the basic authority of the CPA, the right to intervene and participate in agency proceedings and activities.

A party in an administrative proceeding has many critical rights under the Administrative Procedure Act that an *amicus curiae* does not have. Among these are rights to: First, appearance and presentation of evidence; second, submission of rebuttal evidence; third, cross-examination of witnesses; fourth, participation in consultations by the presiding employee with other persons or parties; fifth, notice of agency actions and those of other parties; sixth, hearing and decision on the record; seventh, discovery authority; eighth, submission of proposed findings, conclusions and exceptions to any proposed agency decision; and, ninth, appellate review as of right.

An *amicus curiae* is merely an interested outsider who can ordinarily do no more than submit a written brief, or at most, make a single oral argument, generally at the discretion of the host agency or court.

Most Federal agency proceedings are highly technical and may involve extensive presentation of evidence, argument, and counter-argument. Without having the option to introduce evidence, cross-examine witnesses, and present argument on all aspects of a case, the CPA could not effectively develop its case. The *amicus* amendment would deny the CPA all these rights in every case.

The bill already provides that the CPA will intervene as a party only where party status is necessary for the protection of consumers.

Section 203(a) of S. 3970 expressly provides that the CPA is to "refrain from intervening as a party unless he—Administrator—determines that such intervention is necessary to represent adequately the interests of consumers." This determination will be subject to judicial review in the manner accorded by law together with all other aspects of the administrative proceeding.

The bill gives the CPA strong incentives to participate in agency proceedings only to the extent necessary. The CPA should not, however, be cut off from the right to become a full party if it determines that such status is necessary to protect consumer interests. It might make this determination, for example, where it has factual evidence it feels

must be introduced, where it feels it necessary to cross-examine a witness, or to use agency discovery authority.

The committee should not adopt a rigid rule denying the CPA party status, but should allow it to make its degree of participation fit the facts and circumstances of each case.

Further, section 203 specifically provides that the CPA, upon intervening or participating "shall comply with the rules of practice and procedure governing the conduct thereof." Every agency has a set of rules which, together with the Administrative Procedure Act, establish the procedures to be followed in its proceedings. The CPA will abide by these rules. The host agency retains complete authority to conduct the proceeding in a fair and orderly manner.

Restriction of the CPA to *amicus curiae* status would not be a grant of authority at all.

Every Federal agency can already be an *amicus* or seek party status in proceedings of any other agency.

The amendment would also be contrary to the trend of recent agency and court cases which have expanded the intervention rights of third parties—including consumers. Recent cases have significantly increased the ability of the third parties to intervene in agency proceedings. See for example, *NWRO v. Finch*, 429 F. 2d 725, 737 (D.C. Cir. 1970). In the FTC's proceeding against Campbell Soup, a group of law students was permitted to intervene in a false advertising case and granted the right to discovery, presentation of evidence, and oral and written argument, with respect to the sufficiency of the remedy. For further discussion, see Comment, Public Participation in Federal Administrative Proceedings, April 1972 University of Pennsylvania Law Review; Public Participation in Administrative Hearings, Administrative Conference of the United States, Committee on Organization and Procedure, November 1971.

The *amicus* approach has already been considered and rejected three times.

In 1970, the committee unanimously approved S. 4459, the prior version of this bill, which authorized CPA intervention as a full party in agency proceedings. At that time, the committee considered and dismissed the *amicus* amendment as inadequate. The bill later passed the Senate, 74 to 4.

Last year, in approving similar legislation establishing a Consumer Protection Agency, the House decisively defeated by a vote of 240 to 149 the amendment to limit the agency to *amicus* status only. The amendment had earlier been rejected in committee, 26 to 9. The Senate Government Operations Committee defeated it 10 to 5.

Representative CHET HOLIFIELD, chairman of the House Government Operations Committee which reported the House bill establishing a Consumer Protection Agency, characterized the *amicus* bill in these words:

To limit the CPA's advocacy role to *amicus curiae* alone . . . would tie one of the Administrator's hands behind his back and make him come, hat in the other hand, to plead the consumer's cause.

This statement was also endorsed by Representative FRANK HORTON, the ranking Republican on the Government Operations Committee.

Finally, in nearly 2 months of detailed discussion between the administration and the subcommittee staff, there was no suggestion by any administration spokesman of support for the *amicus curiae* amendment.

At the hearing on the predecessor bill, S. 1177, last November, Mrs. Virginia Knauer, Special Assistant to the President, testifying for the administration, and Roger Cramton, chairman of the Administrative Conference of the United States, the Agency designated by Congress to oversee the Federal administrative process, endorsed full party status for the CPA in cases before other agencies.

I hope and trust, Mr. President, that the full Senate, when it comes to a vote on the Allen *amicus* amendment, will reject it.

Mr. ALLEN. Mr. President, I wish to go into detail in explaining this amendment, a proposal that has become known as the *amicus* amendment because its philosophy is based upon the positive and persuasive role that an *amicus curiae*—friend of the court—has played in American advocacy.

This bill contains some very complex provisions having to do with administrative law, and the *amicus* amendment would modify these provisions.

Due to the complexity of the subject, however, the bill in general, and the *amicus* amendment in particular, have become the subjects of much confusion and consternation.

There are those, particularly non-lawyers not familiar with the amendment, who are of the opinion that the *amicus* amendment is a sham. They think it would limit the role of the Consumer Protection Agency merely to the powers of an *amicus curiae*.

They are wrong, as we shall see. *Amicus* advocacy as proposed in this amendment would be far stronger than *amicus curiae* advocacy, and far stronger than the present bill in certain proceedings.

There are those, particularly businessmen who wish to see no new CPA created to oversee their overseers, who greatly fear the *amicus* amendment. They feel that it is too liberal.

GENERAL PRINCIPLES OF AMICUS ADVOCACY

The goal of the *amicus* amendment is to achieve the most effective and comprehensive form of Federal consumer advocacy with the least amount of disruption.

Its philosophy is rooted in the positive nature of an *amicus curiae* who assists and guides a forum without being disruptive.

It is also felt that this approach is more consistent with that of a Federal agency.

All Federal agencies, in my opinion, should be considered as part of one government. To create one Federal agency to attack its sister agencies—as, I submit, the present bill creating the Consumer Protection Agency would do—is a dangerous and unnecessary experiment in

splitting the Government into opposing forces.

The amendment would provide for forceful CPA advocacy in the same Federal agency proceedings and activities in which the CPA could act as an advocate under the present version of the bill.

This is essentially any Federal deliberation of the CPA's choice. The exceptions, such as the activities of the Central Intelligence Agency, are few.

Such a broad-brush approach to consumer advocacy is consistent with the pervasiveness of the interests of consumers.

But this very pervasiveness contemplates CPA advocacy into areas of which we know little, if anything.

Therefore, full party opponent advocacy—as proposed in this bill now without the amendment we have offered—calls for us to legislate an attack on the unknown through the discretionary power of the CPA.

Consumer advocates under the amicus amendment would, at least for a trial period, be used to assist and forcefully guide other Federal agencies in the protection of the interests of consumers in millions of unknown deliberations covered by the bill.

We anticipate that after a year or two of such experience, the CPA—not Mr. Ralph Nader nor Mrs. Virginia Knauer or the Chamber of Commerce—will come back to the Senate and the House and propose for itself additional and appropriate powers in identifiable areas. Indeed, the bill provides for this in section 202(b) (6).

As the committee reports on this bill clearly demonstrates, we now have no idea where the CPA is going or what it is going to do when it gets there.

The amicus amendment will provide for a positive consistency in CPA advocacy.

MORE EFFECTIVE IN RULEMAKING

The amendment would make the CPA advocacy powers more effective in the great majority of the Federal processes now covered.

That is, in rulemaking—which includes rulemaking—and all informal activities, the amicus amendment has more clout than the present bill.

As Roger Cramton, then chairman of the Federal Administrative Conference, said during the hearings on the House bill:

Rulemaking is probably the part of the administrative process that [the CPA Administrator] should be most interested in, because it has the most general impact. It is the most important from this point of view and also the one in which consumer interests, as such, very rarely participate in the form of supplying comments or making oral argument if a public hearing is held.*

Federal agency rulemaking proceedings under the advocacy sections of this bill far outnumber the adjudications covered by those sections.

With few exceptions, the rulemaking proceedings covered by the present subsection 203(a) would be conducted through nonadversary procedures such as proposals in the Federal Register with

an invitation for written comment by interested persons, or nonadversary hearings very much like a congressional hearing.

Similarly, the CPA would be limited to this form of written or oral comment in the "activities" of Federal agencies under subsection 203(b). It would present written or oral views, or, if persons outside the forum agency participate in such activities, be allowed roughly equal time to state its views on the matter in question.

MORE EFFECTIVE AMICUS PROCEDURE

Under the amicus proposal, the CPA would also, as a matter of unchallengeable right, be able to present the same written or oral comments in both rulemaking under subsection 203(a) and in Federal agency activities under subsection (b) of section 203.

In addition, however, the CPA would be able to have the last word, if it wanted it, in all proceedings and activities.

That is, the amendment provides that prior to the forum agency's taking any final action—including inaction—on the matter at issue, it must give the CPA the right to file written comments with respect to all data, views, and arguments presented. This is found in amendment subsection 203(g).

Such an approach is consistent with treating the CPA as an integral part of the Government, rather than an opponent of the Government.

That is one of the main issues on which I disagree with the concept of this Consumer Protection Agency legislation, and that is that it would create a superagency to regulate and control the regulator. As I have stated earlier, it would be the concept of the Senator from Alabama that we need one Federal Government, not a group of agencies whose function it is to oversee and then a superagency, a superlevel of bureaucracy set over the regulators. That is what the Consumer Protection Agency legislation does, and it is that concept that the amicus amendment seeks to change.

Mr. GURNEY. Would the Senator from Alabama yield for a question?

Mr. ALLEN. Yes, I would be delighted.

Mr. GURNEY. That is one thing that puzzles the Senator from Florida, too, for as I understand it, one of the chief reasons for setting this thing up is that present regulatory agencies either are not doing the job well and ought to be policed, or else this agency ought to be sort of a watchdog over them to prod them to do their job better.

As I understand it—and this is the question I am asking—the new agency is going to be set up in the same fashion as the old agencies were. In other words, the President is going to appoint the commissioners, as well as the administrator. As I understand it, that is the way all the other regulatory agencies, or most of them, were established.

Mr. ALLEN. The Senator is correct.

Mr. GURNEY. The President appoints the commissioners or the agency head, if it is an independent agency like NASA. So my question concerns these regulatory agencies. I understand there are now over 30 that involve themselves with consumer interests and

consumer matters. If they are not doing their job correctly, what assurance will we have that another agency appointed in similar fashion is going to correct all the evils that we now have? Will the Senator inform this Senator how that is going to work?

Mr. ALLEN. It is a mystery to the Senator from Alabama, just as it is to the distinguished Senator from Florida, to have another regulatory body placed on top of the echelon of bureaucracy that we already have. The Senator will recall that here in the Senate some months ago we passed consumer products agency legislation, and the Senator from Alabama assumes that this Consumer Protection Agency would have jurisdiction to more or less oversee the activities of this Consumer Products Agency which was created just the middle of this year. So that is the reason the amicus approach seems more logical to the Senator from Alabama, so that we have an agency that would advise and inform and help and give constructive criticism to the whole agency and and thus enable it to do its job, rather than to be advisory to the agencies that we already have in the Government.

Mr. GURNEY. Mr. President, if the distinguished Senator will yield further, was there anything in the testimony, in the hearings conducted on this bill, or in the report to indicate why this Agency would be effective when other agencies were not effective? What super clairvoyance will this Agency have that others do not have?

Mr. ALLEN. That is something I feel that possibly the advocates of the bill would research rather than the Senator from Alabama because he does not see that this superagency would be more effective than agencies we already have charged with the duty of looking after the consuming public generally.

Mr. GURNEY. The distinguished Senator from Alabama mentioned the Agency that we created earlier, which has to do with consumer product safety. Let us pursue that for just a moment. I think probably the one product in this Nation that kills more people and injures more people every year is the automobile.

My recollection is that the deaths caused by automobiles are somewhere in the neighborhood of 50,000 people killed each year in the United States. I cannot remember the number of people injured, but that number definitely is greatly in excess of the 50,000 figure. So obviously there is something unsafe about an automobile. Should the Consumer Protection Agency enforce any and every possible safety device for automobiles, regardless of cost? Could such safety measures be taken to such an extreme that low- and medium-income families could not afford automobiles?

Might this not be taken to such an extreme that economical family travel by wheel would be virtually eliminated?

Mr. ALLEN. The Senator from Alabama would doubt if they would want to go back to the state of civilization as it existed before the wheel was invented because that was invented some thousands of years ago, although I understand that there are populations

*See p. 498, House Hearings (1971).

throughout the world that have not progressed up to the wheel stage, but I do not believe anybody would seriously recommend that we go back to civilization as it existed prior to the wheel.

Mr. GURNEY. I agree with the Senator. The reason I posed that rather dramatic question was to illustrate that there is another item involved in the matter of product safety, and that is the element of expense. In other words, if the safety of a product is to be improved, usually it is going to cost more. Some consumers would like to see the product made more safe, there is no question about it. Other consumers, if I read the reaction of consumers in my State of Florida correctly, would prefer to run the risk of the old product rather than to pay a substantially increased price for a product made more safe.

I would ask this question of the distinguished Senator from Alabama. Would that not be a matter the Consumer Protection Agency would want to get involved in, and if it did, whose interest would it protect?

Mr. ALLEN. Very definitely that would be an area in which the product safety legislation would be concerned. Very definitely that would be an area that they would take note of and take action in.

Mr. GURNEY. As I understand it, if the Consumer Protection Agency were confronted with such a situation, it would have to make a determination of what interest it would represent—the consumer who wanted more safety or the consumer who wanted a product with less cost. Is that correct?

Mr. ALLEN. Yes. I certainly hope it would be with the consumer. They would have to represent one group or the other. It might be difficult to decide which group to represent.

Mr. RIBICOFF. I wonder if the distinguished Senators would allow me to intervene at this time.

Mr. GURNEY. Yes, indeed.

Mr. RIBICOFF. I am following the colloquy with interest. Let me point out the type work I think is necessary for this Agency.

The Washington Post this morning published an article by Morton Mintz, entitled "Abuses Hamstring FDA." I wish to read a few quotations from the article:

A large share of the defective products that the Food and Drug Administration tries to take off the market ends up being sold to the public, the General Accounting Office has found.

The GAO, reviewing 91 seizures by the FDA in fiscal 1971, found that 69 per cent of the total amount of defective merchandise actually was removed from the market. But the remaining 31 per cent apparently was sold.

The article goes on to give many examples. These examples indicate to me one of the reasons we need a consumer advocate. I agree with my distinguished colleagues from Florida and Alabama that we have many consumer programs and agencies. And I am worried by the very multiplicity of these Government agencies. At the present time we have at least 76 consumer programs in the Government. There may be more. There are some 30 agencies, as the Senator from Florida indicated, that are involved in

administering these 76 programs. What has been so troublesome over the years is that the agencies that are supposed to protect the consumer fail to do their jobs, and end up being spokesmen for the industry they are supposed to regulate.

I think this country could use an agency that would cut through the maze of Federal agencies and legal technicalities and be an effective spokesman for 210 million consumers; to ride herd, if you will, to supervise all these agencies we have put into existence.

Perhaps it would be better to take all of those agencies and combine them into one. I have felt for a long time that health and consumer protection programs would function more smoothly if authority were consolidated.

The other day, one member of our committee, the distinguished Senator from Delaware (Mr. ROTH) made a proposal that received the unanimous approval of the Government Operations Committee. At Senator ROTH's suggestion, the committee mandated the staff to conduct a thorough inventory of all Federal programs—none of us understands all the programs that exist. Not even the Office of Management and Budget knows them all.

With Government so fragmented and responsibility so diffused, we need a consumer advocate to make Government agencies responsive to the needs of consumers.

The fact is that 210 million consumers today do not have a voice either in court or before the Federal bureaucracy. That is why I feel an agency such as this is necessary.

It is true, as the distinguished Senator from Alabama said, that the President would still appoint the administrator and the agency commissioner. Whether they will be any better than the commissioners he appoints to other Federal regulatory agencies I do not know. It will all depend on the President's commitment to consumers. My feeling is that an agency like this will put a President on the spot. This will be a consumer agency. The President and the country will be watching the caliber of man or woman who will be chosen to run this agency. I look upon this agency as a burr under the saddle of all the complacent agencies charged with protection of the consumer. We find today that the regulators are not regulating anything, and the public suffers. If the President is interested in consumer activities, then this agency will be meaningful. If the President of the United States, at any given time is not interested in the consumer, then this will be just another agency.

Critics of the bill have also asked several times: Will we have guerrilla warfare among agencies? I do not think so. I do not think the President of the United States will have agencies working under his jurisdiction that are competing destructively with one another. There will either be comity between those agencies or the President will clean house and a lot of heads will roll.

Congress is saying to the President of the United States, "We are putting this responsibility on your shoulders. We are making the term of the commissioners

co-terminus with your term of office. They will come in when you come into office, and they will go out when you go out of office. So you either mean that you will protect the rights of consumers or you do not mean it."

It is my feeling that the consumer agency we seek to put into being at this time will be an agency that will truly be the advocate for the public. This CPA will have no regulatory authority, so it will not develop an overly close relationship with those whom they are supposed to regulate.

I believe this Agency is the most important one we could put into business, or put into existence, on behalf of the consumer. Without this Agency, much of the work we have done to protect the consumer is a facade and a charade.

I hope the Senate will adopt the bill we have before us now.

Mr. President, I ask unanimous consent that an article by Morton Mintz, entitled "Abuses Hamstring FDA," which appeared in this morning's Washington Post, be inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ABUSES HAMSTRING FDA

(By Morton Mintz)

A large share of the defective products that the Food and Drug Administration tries to take off the market ends up being sold to the public, the General Accounting Office has found.

The situation can pose "a serious health problem," the GAO said in a report on the problems created for the FDA by a lack of authority to get access to needed records (except for prescription medicines), to detain suspect products from interstate shipment and to take the steps necessary to force recall of foods and other products found to be adulterated, misbranded or illegally marketed.

The GAO, reviewing 91 seizures by the FDA in fiscal 1971, found that 69 per cent of the total amount of defective merchandise actually was removed from the market. But the remaining 31 per cent apparently was sold.

The GAO report said that in the period mid-1968 through mid-1971 a total of 3,300 firms refused to co-operate with more than 10,000 requests by FDA inspectors. In about 7,900 cases companies denied the inspectors access to information in their records, the report said.

The GAO, the investigative arm of Congress, urged remedial legislation, citing examples of existing abuses such as these:

The FDA had received several complaints that a liquid drain opener caused skin burns; one consumer said she had suffered serious facial scarring when a container of the product exploded when she poured it into the kitchen drain. Her eyeglasses prevented possible permanent blinding.

The FDA, finding that the label carried an inadequate warning, asked the manufacturer for the shipping records that would show if the product was shipped across state lines and was consequently in the agency's jurisdiction. The firm refused to co-operate.

(The GAO, as is customary, named none of the companies involved in such cases. Rep. Les Aspin, a Wisconsin Democrat, has asked the GAO to identify them.)

FDA inspectors at a processing plant found walnuts that were filthy and contaminated with bacteria from feces. The company refused to provide shipping data, forcing the FDA to obtain evidence of contamination in another state where it removed 36 cases of walnuts. But the delay and the firm's re-

calcitance "exposed consumers to needless risk," the GAO said.

The FDA asked a bakery for records on coconut pies made with eggs supplied by a firm known to have had other eggs contaminated by salmonella, which can cause illness and even death. Inspectors also asked for the bakery's quality control records that were supposed to show the results of testing the pies for salmonella. This was especially important because pies made with possibly contaminated eggs already had been distributed. The bakery denied the FDA access to all of its records.

Mr. GURNEY. Mr. President, will the Senator yield at this point?

Mr. RIBICOFF. I yield back the floor.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. ALLEN. Mr. President, I shall yield briefly, but I would hope the distinguished Senators would interrupt their colloquy shortly in order that I may be able to finish my remarks, and then have the colloquy come later, and possibly the Senator from Alabama will withdraw from the colloquy at that time.

I might state that the Senator from Alabama is anxious to dispose of this legislation in order that we will have an opportunity to go ahead and bring up for action H.R. 13915, the Equal Educational Opportunities Act, possibly known as the antibusing legislation. The Senator from Alabama feels that the more time spent discussing this measure, the less time there will be to discuss the antibusing legislation, on which he places a much higher priority than the pending legislation.

Mr. RIBICOFF. Mr. President, if the Senator will yield, I have always felt that when a measure is before the Senate it should be voted on. I understand the anxiety of the Senator from Alabama to have that proposal voted on before we adjourn. I would hope the Senator from Alabama would use his great influence on other Members of this body who feel the same way to allow us, within the next few days, vote on some of his amendments to the pending legislation. I fear that we may have the makings of a filibuster, although I cannot accuse anyone of that at the present time. There are those who would like to see his antibusing proposal die before we adjourn, just as there are those in this body who would like to see this proposal die before we adjourn. I hope we will all have the opportunity to vote on this proposal as well as the proposal by the Senator from Alabama.

Mr. ALLEN. I appreciate very much the statement by the distinguished Senator from Connecticut that he would like to see a vote on the antibusing legislation. The Senator from Alabama takes that to mean that the Senator not only is going to use his efforts in prevailing upon like-minded Senators with him to allow the measure to come up for a vote, but that his vote will be cast in favor, not necessarily of the legislation, but in bringing the bill up for consideration and resulting in a vote on the legislation.

Mr. RIBICOFF. May I say to the distinguished Senator from Alabama that, while I will vote opposite to the distinguished Senator from Alabama on that issue, I personally would not delay a vote on that or participate in a delay on that

or any other measure. I think that one of the failures of the U.S. Senate, is the fact that we delay the opportunity for the Senate to express its will and to stand up and be counted on every measure before us. I believe it is the obligation of a U.S. Senator, no matter how difficult and no matter how unpleasant it may be to him or how much he disagrees with it, to have the courage to vote on every measure, no matter how controversial, whether it helps him or hurts him. That goes whether it is consumer legislation, whether it is about the Vietnam war, or whether it has to do with the problems of busing. There could be no greater credit to the Senate as an institution if all of us would agree that, after adequate and reasonable debate, we have an opportunity, even a duty, to vote on every measure that comes before us as a body.

Mr. ALLEN. I thank the distinguished Senator from Connecticut for his statesmanship. Even though the distinguished Senator from Connecticut says he will vote opposite to the way the Senator from Alabama is going to vote on this particular bill, the Senator from Alabama would like to remind the distinguished Senator from Connecticut that the Senator from Alabama has, on more than one occasion, voted with the distinguished Senator from Connecticut on his efforts to provide a unitarian rule, a single rule for North and South, with regard to desegregation of the public schools.

Mr. RIBICOFF. That is correct. The problem of developing a truly national policy for providing equal educational opportunity has been overlooked in this country. Public debate has instead centered on the explosive and controversial issue of busing. My proposal for a uniform policy for desegregating the schools in our metropolitan area has received important support from the distinguished Senator from Alabama and other Senators from every section of the Nation. Unfortunately it has not yet met the approval of a majority of the Senate. If the President of the United States and other Senators from the North as well as the South had joined us in our efforts to treat both de facto and de jure segregation the same, we would not be in the fix we are in now. We would be able to defuse this emotional issue and begin developing solutions to this great problem.

I can assure the Senator from Alabama that, while I disagree with his proposal on busing, I will not participate in a filibuster designed to present a vote on it. Every issue a Senator believes important should be voted on if that Senator so wishes. In addition, every Senator should have an opportunity to vote on an issue a fellow Senator deems important.

Mr. ALLEN. I thank the Senator. I may say that possibly the legislation that has been referred to as the antibusing legislation may well have a misnomer, because it provides guidelines for the courts to use in desegregating a public school, and it merely suggests the order of priority of different methods to be used by the courts in their orders. It does provide busing may be used to transport children to the next school offering the same grade and course of

study that they are receiving in their present school. So this would be a rule applicable to North and South.

The Senator from Alabama would hope that the distinguished Senator from Connecticut would give most careful consideration to this bill, because the Senator from Alabama believes that it is not too different from the views of the distinguished Senator from Connecticut on the proposition of providing a single rule for desegregation of schools applicable in the North and in the South.

That is one of the great strengths and one of the great virtues of the legislation we seek to bring up, H.R. 13915.

Mr. RIBICOFF. The difference, of course, is that my proposal called for orderly progress over a number of years in order to defuse the emotion of the moment and permit us to have a society where all people could live together.

I hope there will be opportunity afforded for the Senator from Alabama and those who oppose him to explore the issue, emotionally, perhaps, but intellectually as well, to determine what course we must follow in the future.

Although he opposes the legislation now before us, the Senator has assured me that as far as his amendments are concerned, he is ready to vote at any time. I know that the Senator from Alabama and I could reach an agreement in a matter of minutes as to when the votes will be taken on his amendments. Unfortunately that point of view does not have the support of other Members of the Senate. That, as I say, is unfortunate. I would like to finish this matter and every other piece of legislation now before us before November 7. I think we are entitled, in one way or another, to close up shop by election day, at least, and not to return here as an ineffective lame-duck Congress.

Mr. ALLEN. I thank the Senator from Connecticut, whom I greatly admire.

I yield to the distinguished Senator from Florida.

Mr. GURNEY. Mr. President, I shall be very brief, so that the Senator from Alabama can proceed with his statement.

I wish to join the Senator from Alabama and the Senator from Connecticut in expressing the hope that the Senate leadership will bring the antibusing bill onto the floor for debate and vote in the near future. I could not agree more with the Senator from Alabama that it has a very high priority, and I think it should have been brought on before this particular measure. It was on the calendar before this bill, and certainly as an issue it is one of greatest priority.

In the almost 4 years I have been a Member of the U.S. Senate, I have received tens of thousands of individual communications from the State of Florida on the matter of busing. I cannot remember 10 communications from people from Florida on the matter of consumer protection. So certainly, as far as the people of the State of Florida are concerned, the matter of busing has a much higher priority.

In view of the remarks of the distinguished manager of the bill, the Senator from Connecticut, I did want to mention an article on whether or not this super

agency would be a sort of catalytic factor in determinations of consumer interest.

An article published in one of the Washington newspapers very recently—in the Sunday Star and Daily News of August 13, 1972—written by Jeffrey St. John, who is a commentator for CBS radio and television and a columnist for the Copley News Service, made some interesting observations on a similar agency many years ago. I quote from his article:

Few realize that the CPA concept was tried during the early days of the FDR New Deal and was as big a disaster as that predicated for the current CPA proposals.

Set up with the old NRA, it was directed by Hugh S. Johnson, who later conceded in his memoirs that it was "a blunder in setting up a Consumer Advisory Board as I did."

General Johnson also conceded that the board was a factor in "increased prices to consumers"—in addition to FDR's monetary policy, price fixing in agriculture, and state and federal taxing policies.

"The board representing consumers," Johnson added, "should not have been set up exclusively in NRA where it felt a duty to 'Make A Record' and attack every code on general principles without regard to other influences affecting prices . . ."

So we have had a similar device in operation many years ago, during the 1930's. That was only an advisory board on consumers, and yet the man who set it up, General Johnson, who was as well known in Government circles as anyone in our generation, serving as he did in his most important role during the New Deal days, admitted that he had made a serious blunder because the very thing happened that both the distinguished Senator from Alabama and the Senator from Florida are afraid may happen with this one: This advisory board was so obsessed with protecting consumers' interests that it attacked all the other NRA actions that had to do with consumers, and thereby raised consumer prices, in the opinion of General Johnson.

Now, what we have before us is an agency with far greater power than this old advisory board ever had. If it did not work then, it seems to me it is doubly, trebly, or many times more certain that it will not work now.

I thank the Senator for permitting me to speak.

Mr. RUBIOFF. Mr. President, if the Senator from Alabama will indulge me to answer the Senator from Florida, for whom I have the highest respect, the problem raised by the Senator was subject to consideration by the American Bar Association at its annual meeting just concluded last month, I believe in San Francisco. I read from the report of its section on administrative law:

We have carefully reconsidered the desirability of giving the Consumer Protection Agency any authority at all to seek judicial review of other agencies' action. We conclude that interagency litigation over the validity of administrative action has been commonplace since the early days of the administrative process; that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions; and that the feasibility and desirability of inter-agency litigation should

accordingly be recognized in this statutory context as well. The legal analysis supporting our conclusion is spelled out in the attached Second Interim Report of the Consumer Protection Committee of the Administration Law Section.

I ask unanimous consent, Mr. President, that this report and the second interim report of the consumer protection committee of the American Bar Association on this subject be printed in the RECORD at this point.

There being no objection, the reports were ordered to be printed in the RECORD, as follows:

AMERICAN BAR ASSOCIATION SECTION OF
ADMINISTRATIVE LAW
RECOMMENDATION

The Section of Administrative Law recommends the adoption of the following resolution:

Whereas, the House of Delegates has directed the Section of Administrative Law to preserve the gains made by adoption of the Administrative Procedure Act as the law of the land; and

Whereas, the purpose of the Administrative Procedure Act, as expressed in the title thereof, is "to improve the administration of justice by prescribing fair administrative procedure"; and

Whereas, fairness requires that the interests of consumers be adequately represented by administrative proceedings which may substantially affect such interests; and

Whereas, pursuant to the action of the House of Delegates at the 1972 Midyear Meeting, the Section has reconsidered its views in light of the suggestions advanced by the Solicitor General of the United States in the course of debate on the floor of the House of Delegates;

Now therefore, be it resolved: That the Chairman of the Section is directed to cause the Congress of the United States and the appropriate Committees thereof to be notified:

(a) that the American Bar Association supports in principle the enactment of Title II of H.R. 10835, 92d. Cong., 1st Sess. ("The Consumer Protection Act of 1971"), as passed by the House of Representatives on October 14, 1971;

(b) that the ABA recommends the inclusion therein of a provision which would confirm and make explicit the authority of the new Consumer Protection Agency to institute judicial review proceedings under the Freedom of Information Act if another Federal agency invokes the exceptions in that Act so as to preclude public disclosure of information such other agency has supplied; and

(c) that the ABA opposes the inclusion therein of any provision which would, under any circumstances, make special findings by a reviewing court a prerequisite to the Consumer Protection Agency's institution of or intervention in judicial review proceedings.

REPORT

At the suggestion of the Solicitor General, we have carefully reconsidered the desirability of giving the Consumer Protection Agency any authority at all to seek judicial review of other agencies' action. We conclude that inter-agency litigation over the validity of administrative action has been commonplace since the early days of the administrative process; that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions; and that the feasibility and desirability of inter-agency litigation should accordingly be recognized in this statutory context as well. The legal analysis supporting

our conclusion is spelled out in the attached Second Interim Report of the Consumer Protection Committee of the Administrative Law Section.

We have also considered the implications of the recent Supreme Court decision in *S & E Contractors, Inc. v. United States*, 40 U.S.L. Week, 4410 (April 24, 1972). In that case, the Wunderlich Act (40 U.S.C. Sec. 321-22) and the standard provisions of Government procurement contracts were held to preclude refusal by the General Accounting Office to approve payment on an award rendered in a contract dispute by the contracting Federal agency, and also to preclude relitigation by the Department of Justice when the contractor sues in the Court of Claims to recover on the award.

Not only did the decision apparently respond to the unique problems faced by contractors in dealing with the Government as customer, however, the Court made it perfectly clear that even these factors were considered merely as a guide in interpreting the particular statute involved and that Congress would have been perfectly free to promulgate a different rule. We therefore conclude that the reasons for allowing the Consumer Protection Agency to seek judicial review of other agencies' decisions, as expressed in the attached Committee Report, are in no way called into question by the *S & E* case.

The Section of Administrative Law endorses in principle Title II of the "Consumer Protection Act of 1971." We believe it will materially improve the administrative process by facilitating agency consideration of important interests—those of the consumer as defined elsewhere in the bill (Sec. 304 (4)-(5)). We also applaud the bill's utilization of the scheme of the Administrative Procedure Act as the frame of reference for defining the role of the Consumer Protection Agency.

We recommend, however, that the bill explicitly provide for judicial review of administrative agency action in two situations not presently included in it.

First, we believe there should be no room for doubt that the judicial-review provisions of the Freedom of Information Act are available to the Consumer Protection Agency when another agency invokes one of that statute's exceptions, pursuant to Sec. 209(a) (2) of the bill, so as to preclude public disclosure of information supplied by the other agency.

Private persons seeking the same information from the transmitting agency could obtain review of a decision to withhold it. In a dispute over applicability of a Freedom of Information Act exception, a Consumer Protection Agency assertion that disclosure should be allowed is at least as likely to be meritorious as the position of a private person seeking disclosure. Thus, review of the transmitting agency's contrary determination should be available to the Consumer Protection Agency just as it would be to the private person. Allowing such review is fully consistent with the limited reason for allowing a transmitting agency to forbid disclosure by the Consumer Protection Agency on Freedom of Information Act grounds, i.e., to prevent the Consumer Protection Agency from serving "either purposely or inadvertently as a conduit for information which would not otherwise be made available to the public" (H.R. 95-542, 92d. Cong., 1st Sess. 26 (1971)).

Second, we believe that the Consumer Protection Agency should not be required to satisfy a reviewing court as to preliminary matters before being permitted to institute or intervene in a judicial review proceeding, whether or not the Agency was a party to the administrative proceeding below. The inclusion of such a requirement in Sec. 204 (d) of the bill, which requires findings of adverse effect and inadequate representation in cases where the Agency was not a party below, should be deleted.

The preliminary-findings requirement seems to thwart the purpose of the bill in granting the Agency any authority to seek review in such cases, i.e., to make it necessary for the Agency to file *pro forma* papers in administrative proceedings so as to secure its right to review in the event the final agency action is adverse to consumers. Avoiding the need to satisfy a reviewing court as to preliminary matters would be just such an undesirable incentive to *pro forma* participation or intervention.¹

Under the bill as presently written, moreover, Sec. 204(d) reviewing-court findings would arguably be required on review of fine/penalty/forfeiture adjudications where the Agency has merely filed briefs or argued as *amicus* pursuant to Sec. 204(c). If the reviewing-court findings requirement has any significance at all, it would thus hamper Agency efforts to obtain judicial relief from administrative action in such cases where the interests of consumers have been adversely affected.

The preliminary reviewing-court findings required by Sec. 204(d), finally, relate to the "standing" of the Agency to seek judicial review. The trend in recent decisions has been to minimize the role of such barriers to review and to focus attention on the merits of the challenge to administrative action. As amended on the floor of the House, the new Act would allow the Agency to institute judicial review proceedings where it had not been a party below only "to the extent that a right of review is otherwise accorded by law" (CONGRESSIONAL RECORD, vol. 117, pt. 28, p. 36209), thus insuring that generally-applicable doctrines of ripeness and standing will govern. No more stringent criteria should apply merely because it is the Agency rather than a private person which seeks review.

Respectfully submitted,

MILTON M. CARROW, Chairman.

Dated: August, 1972.

CONSUMER PROTECTION COMMITTEE SECOND INTERIM REPORT—MARCH 1972

In October 1971 the Council adopted a resolution which endorsed in principle Title II of H.R. 10835 (92d Cong.), the House-passed bill to create a Consumer Protection Agency. The resolution further suggested certain amendments strengthening the authority of the proposed Agency to seek judicial review of other agencies' decisions. At the 1972 ABA Midyear Meeting, the House of Delegates referred the resolution back to the Council for further consideration, after the Solicitor General unexpectedly suggested that we had inadequately examined the extent to which one agency of the Federal Government can or should appear in court against another.

This Second Interim Report, prepared by the Chairman of the Consumer Protection Committee, spells out the understanding upon which the Committee originally recommended the resolution adopted by the Council. We adhere to our views, and recommend that the Council do likewise.

SUMMARY

Inter-agency litigation over the validity of administrative action has been commonplace since the early days of the Federal administrative process. In some instances, such

litigation has been expressly authorized by statute. Elsewhere, the right to seek judicial review of other agencies' action has been asserted as inherent in the challenging agency's authority to carry out its own statutory mandate.

The nominal posture of the challenging agency may vary. Sometimes the litigation has been between co-defendants in a judicial review proceeding brought by a private party. In other cases, the challenging agency has intervened as plaintiff or petitioner in a privately-initiated review proceedings. And in some instances, the review proceeding has been initiated by the challenging agency itself.

The interests asserted by the challenging agency have in some cases been proprietary, i.e., involving the Government's financial interests. In other instances the challenging agency has sought to litigate pure policy differences, such as over the proper role of competition in a regulated industry. In neither type of dispute has the multiplicity of Governmental parties appeared to create any difficulties for the courts, which indeed have welcomed the presentation of all sides in the complex and important matters frequently involved.

The agency unable to secure the services of the Department of Justice in such a conflict has readily obtained legal representation from its own General Counsel. Several major agencies are expressly authorized by statute thus to defend their own actions independently of the Justice Department, in the Supreme Court as well as in the lower courts. Where no such statute obtains, the Solicitor General has simply authorized agency lawyers to conduct the litigation on behalf of their respective "clients".

We therefore conclude (a) that no new problems, either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions, and (b) that the feasibility and desirability of inter-agency litigation should accordingly be recognized in the context as readily as elsewhere.

DISCUSSION

1. Present Federal law provides a clear statutory precedent for allowing the Consumer Protection Agency to seek judicial review of other agencies' decisions. Section 201 of the Agricultural Adjustment Act of 1938 (52 Stat. 36, 7 U.S.C. § 1291) authorizes the Secretary of Agriculture not merely "to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission" (§ 201(a), 7 U.S.C. § 1291(a)), but also "to invoke and pursue original and appellate judicial proceedings involving the Commission's determination" (§ 201(b), 7 U.S.C. § 1291(b)). The provision was apparently intended as a vehicle for relieving farmers of exorbitant and discriminatory freight rates, which were thought by many members of Congress to be a significant cause of the economic depression then afflicting African agriculture (see generally the debates on the Act in 82 Cong. Rec.).

Section 201 may have been inspired by a provision in earlier legislation setting up what became the Bituminous Coal Consumers' Counsel (see 82 Cong. Rec. 1199 (remarks of Rep. Mages)). The original Bituminous Coal Conservation Act of 1935 (49 Stat. 991) had authorized the National Bituminous Coal Commission to participate in administrative proceedings before the ICC relating to the transportation of coal, although unlike the Agricultural Adjustment Act the coal statute was silent as to subsequent judicial review (§ 18, 49 Stat. 1007). This right of participation before the ICC had been extended by the Bituminous Coal Act of 1937 (50 Stat. 72) to the Coal Commission's office of consumer's counsel (§ 16, 50 Stat. 90),

which had been created by the 1935 legislation to represent the consuming public in proceedings before the Coal Commission.¹

Pursuant to the judicial review authorization in Section 201(b), the Secretary of Agriculture has repeatedly attacked a wide variety of ICC orders viewed as contrary to the interests of farmers. Typical cases include *Benson v. United States*, 281 F.2d 34 (D.C. Cir. 1960) (Secretary filed suit to review ICC order denying reparations to cotton shippers, and took appeal from adverse district court decision); *Sec'y of Agriculture v. United States*, 350 U.S. 162 (1956) (Secretary intervened as plaintiff in suit to review ICC order approving exoneration-from-liability provisions in rail tariffs, and took appeal from adverse district court decision); *Sec'y of Agriculture v. United States*, 347 U.S. 645 (1954) (Secretary intervened as plaintiff, "acting on behalf of the affected agricultural interests" (347 U.S. at 647), in suit to review ICC order approving railroad charges for unloading, and took appeal from adverse district court decision); *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 351 U.S. 49 (1956) (Secretary intervened as plaintiff in suit to review ICC order enjoining uncertificated carriage of allegedly nonexempt agricultural products, and defended favorable decision on appeal); *ICC v. Inland Waterways Corp.*, 319 U.S. 671 (1943) (Secretary intervened as plaintiff in suit to review ICC order setting rail rates for grain and defended favorable district court decision on appeal); *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944) (relying on § 201, Secretary intervened as plaintiff in suit to review ICC order approving motor carrier merger, and took appeal from adverse district court decision).

Each of the foregoing cases, like many others in which the Secretary challenged ICC action, involved not only the Secretary and the ICC as parties, but also the United States as the statutory defendant (28 U.S.C. § 2322), represented by the Department of Justice (28 U.S.C. § 2323), in suits to review ICC orders.² In some instances, the Justice Department sided with the Secretary against the ICC (*East Texas Motor*, *supra*; *Sec'y of Agriculture v. United States*, 350 U.S. 162, *supra*). In others, the Justice Department took no position (*Sec'y of Agriculture v. United States*, 347 U.S. 645, *supra*; *ICC v. Inland Waterways Corp.*, *supra*). Where the Justice Department has declined to support the Secretary, the latter has usually been represented by the General Counsel of his own Department.³

Another statute authorizing judicial review of agency action at the instance of another government agency is the Bank Merger Act of 1966 (80 Stat. 7, 12 U.S.C. § 1828(c)), which authorizes antitrust suits against bank mergers approved by the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation. Although such suits technically arise under the antitrust laws, the Supreme Court has indicated that they are in the nature of judicial review proceedings (*United States v. First City National Bank*, 386 U.S. 361, 366-67 (1967)) indeed, under the terms of the statute. The function of the court in such suits is to "review de novo the issues presented" in the prior administrative proceedings (12 U.S.C. § 1828(c)(7)(A)), and the agency which granted approval is authorized to intervene as a defendant in support of its order (12 U.S.C. § 1828(c)(7)(D)).

Numerous proceedings have been initiated under this statute by the Justice Department in the name of the United States. In each instance the banking agency involved has vigorously opposed the Justice Department both at trial and on appeal to the Supreme Court. Examples include *United States v. First City National Bank*, *supra* (Justice De-

Footnotes at end of article.

¹ The provision in Sec. 204(d) requiring the Agency in some situations to move for reconsideration at the administrative level before seeking review does not, in our view, jeopardize its right to seek review when it was not a party below. It is our understanding that all agencies would be required to entertain such reconsideration motions notwithstanding that the Agency was not previously a party. Otherwise, we would oppose the reconsideration requirement on the ground stated in text above.

partment filed suit and took appeal from adverse district court decision, which was defended by Comptroller of the Currency); *United States v. Phillipsburg National Bank & Trust Co.*, 399 U.S. 350 (1970) (same); *United States v. First National Bancorporation, Inc.*, 329 F. Supp. 1003 (D. Colo. 1971), *prob. juris. noted*, 40 U.S.L. Week 3398 (1972) (same).

2. While the Agricultural Adjustment Act was the first statute expressly to authorize the initiation of judicial review proceedings by one federal agency against another, litigation between agencies over the validity of orders entered by one of them has been authorized by statute ever since 1911 in a procedural context differing only in form. The Urgent Deficiencies Act (28 U.S.C. § 2321-25) provides, *inter alia*, that all actions to review orders of the ICC shall be brought "by or against the United States" (28 U.S.C. § 2322),⁴ which shall be represented by the Justice Department (28 U.S.C. § 2323).⁵ The ICC is authorized, however, to appear as a party in such a judicial review proceeding (*ibid.*), and to defend its order "unaffected by the action or nonaction of the Attorney General therein" (*ibid.*). Over the years similar provisions have been enacted to govern proceedings for review of certain orders entered by the Atomic Energy Commission, the Federal Communications Commission, the Federal Maritime Commission, the Maritime Administration, and the Secretary of Agriculture (28 U.S.C. §§ 2344, 2348).⁶

The Justice Department has consistently maintained that, in this as in all types of Government litigation, its duty differs from that of counsel for a private litigant in that if the Department is persuaded of the invalidity of the agency order in question its public responsibility requires it to so advise the court.⁷ Such a course has frequently been taken at least since *Pennsylvania R. Co. v. ICC*, 235 U.S. 708 (1914) (Justice Department supported ICC below but took a neutral position in the Supreme Court) and *Assigned Car Cases*, 274 U.S. 564 (1927) (Justice Department opposed ICC throughout the litigation).

The result has been vigorous litigation between the Justice Department and the agencies subject to this procedure, on matters as varied as railroad mergers (*Baltimore & O. R. Co. v. United States*, 386 U.S. 372 (1967)); rate competition between railroads and coastwise water carriers (*ICC v. New York, N.H. & H.R. Co.*, 372 U.S. 744 (1963));⁸ harmonization of the Administrative Procedure Act with procedural provisions of the Interstate Commerce Act (*Pan-Atlantic Corp. v. Atlantic Coast Line R. Co.*, 353 U.S. 436 (1957)); exclusive-dealing discounts in ocean freight rates (*FMB v. Isbrandtsen Co.*, 356 U.S. 481 (1958)); applicability of the APA prohibition against *ex parte* contracts in certain FCC rule making proceedings (*Sangamon Valley Television Corp. v. United States*, 269 F.2d 221 (D.C. Cir. 1959)); and segregation in railroad dining cars (*Henderson v. United States*, 339 U.S. 816 (1950)). In virtually each instance⁹ the agency has been represented by its General Counsel or a member of his staff, and the court has resolved the intra-Governmental dispute as readily as one between private parties.

The concept of litigation between agencies which nominally are codefendants has met with no disfavor in the courts. To the contrary, one court has expressly stated (*Consolidated Truck Service, Inc. v. United States*, 144 F. Supp. 814, 820 (D.N.J. 1956)) that:

"We can perceive no reason why a Department or a Cabinet Officer, charged with duties of decision by Congress may not express views in accordance with judgment and conscience. The writ of Mark, iii, 25 does not run in this case."¹⁰

Before Congress, the Justice Department has steadily urged the preservation of its right to litigate against other agencies in judicial review proceedings, despite agency allegations that the procedure is "embarrassing" or otherwise unseemly. As recently as 1970, Deputy Attorney General Kleindienst wrote (*Hearings on Judicial Review of Decisions of the ICC Before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee*, 91st Cong., 2d Sess. 8-9):

"Still applicable is the following objection to legislation to remove the United States and the Attorney General from suits to set aside Commission orders expressed by the then Deputy Attorney General William P. Rogers in an April 11, 1955 letter to the Director of the Bureau of the Budget: " * * * The overall legislative plan now is and should be to create a check and balance between the Commission and the Attorney General in such fashion as to give double protection to the people of the United States."

The Justice Department's testimony in the cited hearings explicitly recognized the particularly important role of "double protection" when the representation of consumer interests is involved (*id.* at 12):

"Mr. COMEY (Deputy Asst. Att'y Gen., Antitrust Division). * * * Transportation affects the economy. It also affects the consumer. There is no independent consumer counsel within the Interstate Commerce Commission. Therefore, it is important that the United States bring an independent view to bear on the conduct of this litigation at all levels."

3. Even in the absence of explicit statutory authorization, numerous federal agencies (sometimes represented by the Justice Department and sometimes not) have sought judicial review of other agencies' decisions. Their right to do so has regularly been asserted by the Justice Department, and been confirmed by the Supreme Court.

The seminal case is *United States v. ICC*, 337 U.S. 426 (1949). The Department of the Army (represented by the Justice Department) had sought reparations from certain railroads, alleging discrimination vis-à-vis other shippers. The district court had dismissed the Army Department's appeal from an adverse ICC decision, on the ground that the United States (in whose name the proceeding was being conducted) was statutorily required to be named as defendant in the review action and that a suit by the United States against itself could not be maintained. The Supreme Court reversed, holding that "courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented" (337 U.S. at 430).

The inherent right of Government agencies to protect the proprietary interests of the United States by seeking judicial review of other agencies' decisions had previously been recognized in *United States v. Public Utilities Commission*, 151 F.2d 609 (D.C. Cir. 1945), where the Justice Department filed suit in the name of the United States to review an electric power rate order of the District of Columbia PUC. Subsequent instances include *United States v. ICC*, 352 U.S. 158 (1956) (controversy similar to that in *United States v. ICC*, 337 U.S. 426, *supra*); *Western Air Lines, Inc. v. CAB*, 347 U.S. 67 (1954), and *Delta Air Lines, Inc. v. Summerfield*, 347 U.S. 74 (1954) (Postmaster General, represented by Justice Department, petitioned for review of CAB orders setting mail pay rates); *Secretary of the Army v. FPC*, 377 F.2d 496 (D.C. Cir. 1969) (Secretary, represented by Justice Department, petitioned for review of FPC order disclaiming regulatory jurisdiction over natural gas sales to military post); *American Trucking Associations, Inc. v. FCC*, 377 F.2d (D.C. Cir. 1966), *cert. denied*, 388 U.S. 943 (1967) (Adminis-

trator of General Services, acting in name of United States but represented by GSA lawyers, petitioned to review FCC order approving radio common carrier rates.¹¹

4. In *Far East Conference v. United States*, 342 U.S. 570 (1952), the Supreme Court ruled that a Justice Department petition to review a Federal Maritime Board order on antitrust grounds would be justified by the position of the United States as a shipper of ocean freight. Even where no proprietary interests are involved, however, but only differences in policy, the Justice Department has relied upon the proprietary cases as establishing a right to seek judicial review.

Thus, when the Justice Department filed suit in the name of the United States to review on antitrust grounds the ICC order approving the Great Northern/Northern Pacific railroad merger, it asserted that "the government's right to maintain this action, even though it is in form of a suit by the United States against the United States, is clearly established by *United States v. Interstate Commerce Commission*, 337 U.S. 426, 430-32" (Brief for the United States, p. 85, *United States v. United States*, 296 F. Supp. 853 (D.D.C. 1968), *aff'd*, 396 U.S. 491 (1970)). Similarly, the Justice Department has cited *United States v. ICC* as well as confession-of-error cases as showing that intra-Governmental litigation on policy matters "in fact, of course * * * is far from unique" (Reply Brief for Appellant United States of America, p. 6, *Pacific Far East Line, Inc. v. FMB*, 275 F.2d 184 (D.C. Cir.), *cert. denied*, 363 U.S. 827 (1960) (Justice Department, in the name of the United States, intervened as plaintiff in suit to review FMB order on antitrust grounds)).

The principal rationale invoked by the Justice Department to justify challenges in court by one agency to the decisions of another has been, however, that "government agencies have standing to protect the interests committed to their jurisdiction by participating in administrative proceedings or challenging administrative action even without express statutory authority for those specific acts" (Mem. in Support of Motion for Stay, p. 31, *United States v. FCC*, No. 21147, D.C. Cir., *dismissed as moot*, Jan. 23, 1968) (Justice Department took appeal in name of United States from FCC order approving transfer of ABC's broadcast stations to ITT as part of ITT/ABC merger). In that case, as in its suit to review the ICC order, approving the Great Northern/Northern Pacific railroad merger, the Justice Department relied upon "the authority of the Attorney General to protect the interests of the public in competition * * * as an independent basis for suit" (*ibid.*; Brief for the United States, p. 85, *United States v. United States*, 296 F. Supp. 853 (D.D.C. 1968), *aff'd*, 396 U.S. 491 (1970)).¹² Substantially the same argument had been advanced twenty-five years earlier, specifically as to a Consumers' Counsel, in *Associated Industries of N.Y. State, Inc. v. Ickes*, 134 F.2d 694 (2d Cir.), *vacated as moot*, 320 U.S. 707 (1943).

In *Associated Industries*, the Government urged that individual consumers of coal had no standing to seek review of an order of the Interior Department's Bituminous Coal Division (successor to the National Bituminous Coal Commission, see note 1 *supra*) setting minimum prices for coal. The argument was (a) that if the Coal Consumers' Counsel had standing to assert consumer interests on review, his standing must be exclusive so as to protect his authority to forego judicial review on behalf of consumers, and (b) that the Consumers' Counsel did have standing, even though the statute nowhere so provided, because "being designated by § 2(b) [of the Coal Act] to represent the Consumers' interest in 'any proceeding before the [Coal] Commission,' he is necessarily, by clear implication, * * * a

Footnotes at end of article.

'person aggrieved', for purposes of court review within the meaning of [the Act's general judicial review provisions]" (134 F. 2d at 708) (Frank, J.).¹³

The Second Circuit rejected the Government's claim of exclusivity, on the ground that "anyone possessing or representing a consumer's interest, is a 'person aggrieved', and accordingly, if he is a party to the Commission proceedings, entitled to seek court review" (*id.* at 709). There was no hint of disagreement with the Government's reliance on the same theory to show that, despite the lack of explicit statutory authorization for the Consumers' Counsel to pursue the interests of consumers beyond the administrative level, he was nevertheless empowered to seek judicial review.

The *Associated Industries* opinion was subsequently cited by its author in *Isbrandtsen Co. v. United States*, 96 F. Supp. 883 (S.D.N.Y. 1951) (3-judge court), *aff'd by an equally divided court*, 342 U.S. 950 (1952), as authority for the Secretary of Agriculture to intervene as plaintiff in a suit to review a Federal Maritime Board decision even though no statute explicitly so provided. In conjunction the court cited Section 203(j) of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended, 7 U.S.C. § 1622 (j)), which authorizes the Secretary to "assist in . . . obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body . . .". Unlike the Agricultural Adjustment Act of 1938, however, the 1946 statute makes no provision for judicial review at the instance of the Secretary.

It is therefore clear, we think, that the inherent-power rationale for allowing one agency to seek judicial review of another's decisions was accepted by the court in *Isbrandtsen*. And Judge Frank's reference to his prior *Associated Industries* opinion is further evidence that the Second Circuit in the latter case has entertained a similar view.

In *United States ex. rel. Chapman v. FPC*, 345 U.S. 153 (1953), the Supreme Court explicitly upheld the right of the Secretary of the Interior to petition for review of an FPC order granting a hydroelectric plant construction license even though no statute so provided. While declining to state its reasons, the Court indicated no disagreement with the inherent-power test which had been applied by the court below, *i.e.*, whether the challenging agency is "able to point to some special interest for which he is charged with responsibility that may be adversely affected by the decision attacked" (191 F. 2d 796, 800 (4th Cir. 1951)).¹⁴

In numerous other instances, both before and after that decision, the Supreme Court has similarly entertained challenges to agency orders initiated in the lower courts by other agencies despite the lack of an express enabling statute. Examples include *Vinson v. Washington Gas Light Co.*, 321 U.S. 489 (1944) (OPA filed suit to review D.C. Public Utilities Commission rate order); *ICC v. City of Jersey City*, 322 U.S. 503 (1944) (OPA intervened as plaintiff in suit to review ICC rail passenger fare order); *North Carolina v. United States*, 325 U.S. 507 (1945) (same); *FMB v. Isbrandtsen Co.*, 356 U.S. 481 (1958) (Secretary of Agriculture intervened as petitioner in proceeding for review of FMB order); *Udall v. FPC*, 387 U.S. 428 (1967) (Secretary of Interior petitioned to review FPC order granting hydroelectric plant construction license).

5. A remaining issue, and one possibly troubling the Solicitor General, may be the extent to which the Consumer Protection

Agency should be free to litigate outside the Justice Department's control. The issue has occasionally arisen as to proposed legislation affecting other agencies, with the Justice Department usually insisting that its role as lawyer for the Government should be exclusive. But Congress has frequently declared otherwise, as the foregoing text demonstrates.¹⁵ Even where no statute explicitly so authorizes, moreover, a number of agencies (*e.g.*, the FCC, the FTC, the SEC) conduct their own court of appeals litigation through their own lawyers despite the general provisions of 28 U.S.C. §§ 516 and 518 reserving the conduct and supervision of litigation to the Justice Department. See *FTC v. Dean Foods Co.*, 384 U.S. 597 (1966), where the Supreme Court endorsed this practice as proper. And in the Supreme Court the Solicitor General has frequently authorized agencies to litigate through their own lawyers when he determines not to support them. For examples, in addition to many of the cases cited herein, see *Purolator Prods., Inc. v. FTC*, 389 U.S. 1045 (1968); *Standard Oil Co. v. FTC*, 340 U.S. 231 (1951).

CONCLUSION

Against this history of inter-agency judicial review litigation, it would be difficult to argue that fundamental principles are infringed by the proposal explicitly to authorize the Consumer Protection Agency to seek judicial review of other agencies' decisions. To the contrary, it is probable that the courts would recognize the standing of the Agency to seek review even in the absence of statutory provision therefor.

The Consumer Protection Agency proposal is in substance identical, moreover, to the existing provision for review of ICC orders at the instance of the Secretary of Agriculture. That procedure has apparently worked well to protect the interests of farmers for almost 35 years. We perceive no reason why the use of a similar procedure to protect the interests of consumers would not be equally workable.

Nor would any problem in fact arise in determining the proper role of the Justice Department in such interagency review litigation. As in the cases cited herein, an agency which the Justice Department is unwilling to support can readily be authorized to litigate through its own lawyers. This procedure has worked well in the past, and there is no reason to suppose it would not work here.

The desirability of this practice where agencies are in dispute was spelled out by a former Acting Solicitor General in *Stern, "Inconsistency" in Government Litigation*, 64 *Harv. L. Rev.* 759, 768-69 (1951). It was noted that "even where the ultimate authority over litigation policy rests in the Attorney General and Solicitor General, the most orderly course may not be the best course. Many of the administrative agencies are important policy-making bodies. Not even the President has authority to tell them how to decide particular cases. They are not subject to the supervisory authority of the Department of Justice. In such cases, determination by the judiciary is often more satisfactory than an effort by the Department of Justice to force its own views on the disagreeing agency, by refusing to present the agency's position to the courts. The Attorney General has no authority to give binding legal advice to the independent agencies. Only the judiciary has authority to give the conclusive answer to the question in dispute."

We believe this view is sound. We believe it applies to the proposed Consumer Protection Agency as well as to the agencies before which the new Agency would appear, just as it was in fact applied to officers such as the Secretary of Agriculture, the Secretary of the Interior, or the Director of Economic Stabilization in the cases cited herein. As a recent study concluded (Note, *Government*

Litigation in the Supreme Court: The Roles of the Solicitor General, 78 *Yale L. J.* 1442, 1466 (1969)):

"The fact that . . . policy disagreements involve intra-government conflict should not alter the appropriateness of the court's assuming the responsibility for resolution. . . ."

"Where an issue has reached the court, the presentation of the conflict within the Executive, and certainly between the Executive and the regulatory commissions, may encourage more informed decisionmaking by the court."

FOOTNOTES

¹ In 1941 the Bituminous Coal Consumers' Counsel was established as an independent agency in the Executive Branch to carry on the work of the former office of consumers' counsel in the Coal Commission (55 Stat. 134), which was then being performed by a Division in the Office of the Solicitor of the Interior Department pursuant to Executive Reorganization Plan No. II of 1939 (53 Stat. 1431). Participation in ICC proceedings was thus among the functions of the Coal Consumers' Counsel and his predecessors from 1935 until the expiration of the Bituminous Coal Act in 1943 (57 Stat. 84).

² The statute speaks of the Attorney General. In the Supreme Court, however, the United States is represented by the Solicitor General (28 C.F.R. § 0.20(a)). References hereafter to the Justice Department should therefore be read to include not merely the Attorney General and his subordinates but also the Solicitor General insofar as Supreme Court proceedings are involved.

³ In *McLean Trucking*, *supra*, the Attorney General sided with the Secretary in the district court and formally took no position in the Supreme Court. Lawyers supplied by the Antitrust Division were among those representing the Secretary on appeal, although the complaint filed by the Secretary as plaintiff in the district court had been signed only by the Acting Solicitor of the Department of Agriculture.

⁴ The reference to actions "by" the United States may have been intended to cover actions to enforce ICC orders, which are provided for in the same section as review actions (28 U.S.C. § 2321).

⁵ See note 2 *supra*.

⁶ The procedure has also been made applicable to judicial review of certain orders of the Secretary of the Interior (50 U.S.C. § 167h(b)).

⁷ *E.g.*, Reply Brief for the United States, p. 1, *Maintenance of Way Employees v. United States*, 221 F. Supp. 19 (E.D. Mich.) *aff'd*, 375 U.S. 216 (1963).

⁸ In this case the Attorney General took an appeal from a district court decision overturning an ICC order but reserved the right to part company with the Commission, and ultimately argued that the ICC order was erroneous.

⁹ See note 3 *supra* as to the unusual situation in *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944).

¹⁰ The cited verse reads, "And if a house be divided against itself, that house cannot stand" (King James).

¹¹ The United States was also named a respondent in the review petition, as required by statute (see p. 8 *supra*).

¹² See also Brief for Appellant United States of America, pp. 12-13, *Pacific Far East, Inc. v. FMB*, *supra* (" . . . intervention [by the United States as a plaintiff in suit to review FMB order] was deemed necessary in order to permit the United States to protect its 'interest' in assuring that fullest consideration be given to these basic competitive factors").

¹³ The Attorney General had previously given a formal opinion to the Secretary of the Interior that the question whether the Consumers' Council had standing to seek review "can be finally determined only by the

courts" and that, if called upon to appear in a review proceeding initiated by the Consumers' Council, "it would be my purpose not to oppose the position of the Consumers' Council but only to collaborate in the full and free presentation of the issues to the court for its assistance in resolving any doubts that might be suggested concerning the right of the Consumers' Council to the relief sought" (Letter dated Feb. 3, 1938, from Att'y Gen. Cummings to the Secretary of the Interior, in *Hearings on Interior Department Appropriation Bill for 1939 Before the Subcommittee of the House Appropriations Committee*, 75th Cong., 3d Sess., Pt. I, at 78 (1938)).

"The same test was applied by the D.C. Circuit in holding that the Civil Aeronautics Administration, the prosecutor in pilot license revocation proceedings before the Civil Aeronautics Board, could not seek judicial review of Board decisions favorable to the pilots (*Lee v. CAB*, 225 F.2d 950 (D.C. Cir. 1955)) ("When one government agency has been found to have standing to seek review of another government agency's action, the two agencies have had different interests * * *. We have found no case in which agency action has been reviewed on the application of an official whose function is to prosecute claims in and for the same agency.")

"See also § 4(a) of the National Labor Relations Act, 49 Stat. 451, as amended, 29 U.S.C. § 154(a) ("Attorneys appointed under this section may, at the direction of the [National Labor Relations] Board, appear for and represent the Board in any case in court"); § 20(c) of the Natural Gas Act, 52 Stat. 832, 15 U.S.C. § 717s ("The [Federal Power] Commission may employ such attorneys as it finds necessary * * * to appear for or represent the Commission in any case in court"); § 213(c) of the Federal Power Act, 49 Stat. 861, 16 U.S.C. § 825m(c) (same).

Mr. RIBICOFF. The committee concluded that:

No new problems either doctrinal or practical, are presented by the proposal to give the Consumer Protection Agency the right to initiate or intervene in proceedings for judicial review of other agencies' actions, and (b) that the feasibility and desirability of inter-agency litigation should accordingly be recognized in this context as readily as elsewhere.

So, while I recognize there is a difference of philosophy and opinion as to whether this should or should not be done, we do have precedents for it, and we do have two groups which have given this matter much more exhaustive study than any of us, who have indicated that the proposal is proper and should be recommended.

Mr. GURNEY. Mr. President, will the distinguished Senator from Alabama yield for a unanimous-consent request?

Mr. ALLEN. I yield.

Mr. GURNEY. Mr. President, I ask unanimous consent that two staff members, Peter Chambliss and George Beal, be permitted to be on the floor during the debate on the consumer protection bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I commend the distinguished senior Senator from Florida (Mr. GURNEY) for his comments and colloquy and the contributions he has made in pointing out the dangers inherent in this legislation. I want to commend him also on the hard work that he did in the Committee on Government Operations over a period of

months, in seeking to make this bill less objectionable, and remove some of the bugs from the legislation, in order that the committee might send to the floor a bill that he could support and that the Senator from Alabama could support in this area. Certainly I want to commend highly the distinguished senior Senator from Connecticut (Mr. RIBICOFF) for his dedication to this concept of a Consumer Protection Agency and the many hours, weeks, and months that he has put in working toward getting legislation passed that would set up a Consumer Protection Agency.

Simply because the Senator from Alabama does not agree with the distinguished Senator from Connecticut does not lessen my admiration for the distinguished Senator from Connecticut (Mr. RIBICOFF) who is so effective in this field and in so many other fields of legislation. The Senator from Alabama greatly admires and respects the distinguished Senator from Connecticut.

I continue with my remarks in connection with the pending amicus amendment.

Such an approach—that is, the giving of the CPA the right to file written comments with respect to all data, views, and arguments presented before the agency—is consistent with treating CPA as an integral part of the Government rather than as an opponent of the Government, which the distinguished Senator from Florida pointed out is embraced in the concept of the proposed legislation. But it is also consistent with the goal of giving the CPA the most powerful and effective advocacy that would be appropriate.

AVOIDING PROBLEMS IN ADJUDICATIONS

The remaining area of Federal agency process covered by the bill, adjudication—which includes licensing—accounts for far fewer proceedings than does rulemaking.

The point is that, actually, there would be a greater field of operation for the CPA under the amicus concept than under the bill pending before the Senate.

The remaining area of Federal agency process covered by the bill, adjudication—which includes licensing—accounts for far fewer proceedings than does rulemaking.

This is because rulemaking is essentially quasilegislativ and of general applicability. Adjudication is essentially quasijudicial and of specific applicability—often applicable only to one person or company.

It is in formal adjudications on the record, a very limited area considering the scope of Federal agency process, that the term "intervene as a party" is appropriate for adversary advocates; in rulemaking, the term "participate" is used more often, and you will note that the present bill so segregates these terms.

Under the present section 203 of the bill, the CPA would be given the right to assign itself whichever advocacy status it felt appropriate, from full party opponent down to filing a written comment, and to make use of the forum agency's discovery process—subpoenas, and so forth—no matter what status the CPA chose for itself.

This would vary considerably existing

law under which the forum agency has discretion to exclude entrants as well as to assign them whatever status deemed appropriate under the relevant law.

As Senator ERVIN stated so well in the committee report:

This represents a vast amount of unprecedented discretion, similar to a football fan having the discretionary right to come off the sidelines, whenever he sees the need, and order the quarterback to allow him to play at any of the positions the interloper sees fit to play. All this, of course, in the praiseworthy interest of winning the game. Certainly, that is a most appropriate analogy.

It is in relation to adjudications that most Federal agencies objected or expressed reservations to the bill's advocacy powers. See, for example, the letters from the Federal Trade Commission, Justice Department, Food, and Drug Administration, Comptroller of the Currency, Federal Home Loan Bank Board, Federal Mediation and Conciliation Service, National Labor Relations Board and Pay Board which I have inserted in the RECORD from time to time.

Mr. President, in order to conserve time, I ask unanimous consent to have printed at this point in the RECORD the text of my minority views with respect to the bill, as contained in committee report 92-1100, starting on page 99 and continuing through to page 116.

There being no objection, the minority views were ordered to be printed in the RECORD, as follows:

THE AMICUS AMENDMENTS

An amendment was offered in Committee that was not only consistent with the Democratic plank, but, in my opinion, would have resolved the major problems contained in the bill. The amendment was defeated in Committee, but it should be given serious attention on the floor.

It was called the "Amicus" amendment by some, because it would have attempted to grant the Consumer Protection Agency a type of advocacy based on the positive powers enjoyed by an amicus curiae ("friend of the court") when he appears before a court.

A less powerful version of this amendment was offered during the debate on the House-passed Consumer Protection Agency bill, H.R. 10835. At that time, Congressman Benjamin Rosenthal of New York, a supporter of a House amendment which would have made their bill more like the one reported here, stated that the weaker House version of an Amicus Amendment was more desirable for consumers than the bill that passed that chamber.¹

Mr. Rosenthal, of course, preferred his amendment which was actively supported by Mr. Ralph Nader, but ranked the Amicus Amendment as second best. Both Mr. Rosenthal's and the Amicus Amendment failed in the House. But it would appear that Mr. Rosenthal, an acknowledged advocate for consumer causes, considered even the weaker House version of an Amicus Amendment as on a middle ground between the House-passed bill and the bill reported by the Senate Government Operations Committee.

The Senate Amicus Amendment would allow the Consumer Protection Agency to participate in any of the deliberations subject to advocacy under the reported bill, those of administrative agencies and courts at Federal, State and local levels.

In these deliberations, however, the amendment provides the Consumer Protection

¹ See CONGRESSIONAL RECORD, vol. 117, pt. 128, pp. 36197-36198.

Agency with a status consistent with that of a Federal agency, not that of a party opponent.

The Consumer Protection Agency, under the Amicus Amendment, would act as a Congressional delegate to forcefully assist—not oppose—current agencies in giving the interests of consumers appropriate consideration, and to identify areas in need of restructuring or additional consumer advocacy power.

The Amicus Amendment provides that the Consumer Protection Agency would, first be allowed to comment in writing or orally in any Federal proceeding or activity of its choice. It would do this, however, in much the same manner as an amicus curiae, instructing the agency or court on the appropriate law and advocating a position favorable to the interests of consumers.

Secondly, administrative forums, prior to taking action resulting from a deliberation in which the Consumer Protection Agency appeared, must give the consumer agents an opportunity to review and comment upon all submitted data, views and arguments upon which the forum agency will make a decision.

Thirdly, if the forum agency still proposed to take final action that in the opinion of the consumer agents was inconsistent with the interests of consumers, the Consumer Protection Agency would have an unchallengeable right to invoke that forum's provisions providing for an administrative rehearing or reconsideration.

Thus, the Amicus Amendment attempts to perfect the administrative process, rather than subvert it in the Judicial Branch, forcing Federal judges to make public policy.

We envision that the Consumer Protection Agency will return to Congress shortly with recommendations for increasing its powers in areas needing stronger advocacy. It is at that point that Congress will be able to ascertain what specific agencies, if any, should be subjected to different forms of advocacy.

SURVEY OF AFFECTED AGENCIES

In the months that the Subcommittee and Committee have been considering the technicalities of this bill, I have asked selected major Federal agencies to list for me those of their proceedings or activities that would be subject to Consumer Protection Agency intrusion under this bill.

The response was shocking. I have introduced into the Congressional Record copies of some of these answers, many of which go beyond my request for a list of proceedings and point out the severe dangers of this bill.

To illustrate with just a few examples, a legal opinion from the Justice Department stated that the powers "pose a threat that the orderly and effective dispatch of the public business in the public interest might be significantly disrupted."

The Federal Mediation and Conciliation Service expressed the fear that federally administered collective bargaining could be severely hampered.

The Comptroller of the Currency expressed serious concern over the fact that consumer protection agents would have access to sensitive data developed in bank examinations. The Tennessee Valley Authority advised that intervention in its Board's activities would be contrary to the public interest; and, the Federal Trade Commission thought that the proposed intervention in its adjudications would be inappropriate.

The list could go on. In the responses received from 36 Federal agencies that were reprinted in the Congressional Record, there are described in detail 1,308 proceedings and activities subject to intrusion under the bill, and thousands more described generally by such comments as "everything we do." Over the recent recess I have received more responses describing hundreds of additional Federal actions that will be affected by the

bill, and even these show just the iceberg tip. In short, under the bill, the potential for administrative mischief is limitless.

One need only read a few of these responses to realize the overwhelming lack of knowledge that exists concerning the impact of this bill on the administration of our laws. The letter from the Department of Agriculture, alone, lists hundreds of agricultural proceedings and activities which are little known to many, but nonetheless subject to disruption under the bill at the discretionary whim of the Consumer Protection Agency.

For those who have not read any of the responses from Federal agencies, I shall append a relatively short one received from the Environmental Protection Agency.

You will note that the EPA response is based upon a reading of a June 20 print of this bill, as were most responses. Let me hasten to point out—as a reading of this response in conjunction with the reported bill will demonstrate—that none of the subsequent changes made in Committee affect the unchallengeable discretion of the Consumer Protection Agency to intrude into the described proceedings.

For example, most, if not all, of the described EPA activities could and do have the effect of increasing the prices consumers pay in the marketplace for countless goods and services. This is a substantial concern of consumers, and the bill provides the Consumer Protection Agency with unchallengeable discretion to intrude in such proceedings and take the EPA to court, if it wishes, to protect that interest. The EPA, of course, will be one of the Federal agencies required by this bill to change its rules of practice to allow for intrusion by consumer protection agents.

THREAT TO FREE COLLECTIVE BARGAINING

The EPA is a Federal agency that is often in the public spotlight, and, therefore, it is no surprise to many that its important activities have a substantial effect on the interests of consumers in the areas of purity, quality, healthfulness and safety of products bought in the marketplace, not to mention the cost and availability of such products.

But there are many Federal agencies that perform equally important functions in relative obscurity. We have no idea how many of these agencies exist, but my survey has disclosed a few of them, including the Federal Mediation and Conciliation Service (FMCS).

The FMCS is active in Federally-mediated collective bargaining situations between management and labor. It prefers to perform its vital functions without fanfare, because it is such fanfare that makes its negotiation efforts difficult.

One need only be reminded of the recent dock strikes as well as past and pending attempts to further unionize the lettuce growing portion of the agriculture community to realize the major impact collective bargaining negotiations have upon the interests of consumers.

Vital issues of tremendous concern to the economy of the country and safety and comfort of its public often are resolved in such negotiations. Management may say that a second or third man in the train cab is wasteful featherbedding and should not be allowed in the interests of keeping passenger costs down; labor will say that the extra personnel represent a safety factor, protecting passengers.

The atmosphere in these negotiations is often tense, and could become further charged, if not completely disrupted, by the entrance of a third negotiator such as the Consumer Protection Agency.

For those who are not familiar with the intricacies of this complicated bill, here is how the Consumer Protection Agency will be able to intrude into collective bargaining activities of the FMCS:

1. The FMCS, obviously, is a Federal Agency. See section 401(a) of the bill.

2. The collective bargaining activities of the FMCS, being part of its authorized responsibilities, therefore are "agency activities" under the bill. See section 401(4).

3. The Consumer Protection Agency makes a discretionary determination that the result of the collective bargaining activities of the FMCS "may substantially affect the interests of consumers." See section 203(b).

4. It bases this determination on a discretionary finding that consumers have substantial concerns in relation to the costs they have to bear in the marketplace for goods and services and for preservation of consumer choice and a competitive market, all of which "may" be affected substantially by the outcome of the collective bargaining. See sections 401(11), 203(b).

5. The FMCS or labor and management officials cannot challenge the Consumer Protection Agency's determinations, findings or right to enter into the negotiations. See section 210(e) (1).

6. After having used its unchallengeable power to intrude, the CPA must, if it asks for it, be given "an opportunity equal to that of any person outside the agency (FMCS) to participate in such activity." See section 203(b) (2).

7. No one can challenge this right to participate equally with representatives of labor and management. See section 210(e) (1).

It should be noted that the same Consumer Protection Agency rights would apply to conferences between the President and his advisers on whether to invoke the Taft-Hartley Act to provide a cooling off period during a strike, or to negotiations that could lead to any Federal consent order.

The Director of the FMCS has indicated in a letter to me that he is appalled at the prospects under this bill as they relate to his agency. He has asked that FMCS be specifically excluded.

A copy of the FMCS letter is also appended to these views for study by those who are concerned with the continued viability and preservation of American collective bargaining.

We, of course, cannot exempt FMCS under this broad brush bill, because it is only one of many Federal agencies the activities of which vitally concern the interests of consumers. To so exempt FMCS would start a landslide of similar requests.

We could, however, provide the Consumer Protection Agency with Amicus advocacy across-the-board, and await its recommendations as to which particular Federal agency activities deserve to be subject to more aggressive intrusion.

ARBITRARY EXEMPTION ATTEMPTS

One of the major difficulties I have with this bill is that we must trust in the judgment of three as of yet unknown commissioners as to what is, or is not a Federal proceeding that "may" result in a substantial impact upon the interests of consumers.

My concern here is that we are mandating arbitrariness. If there is any doubt about this, one need only look at the majority views as to what proceedings may or may not substantially affect the interests of consumers.

The majority says, for example, that a rise in the price of steel may affect substantially the interests of consumers of automobiles. Therefore, we are to assume that a Price Commission or Pay Board proceeding that could result in such a price rise would be subject to CPA intrusion. One easily can see the causative relation between the result of the proceeding and the consumer marketplace transaction.

But then, the majority makes the arbitrary blanket statement that "NLRB cases . . . are beyond the jurisdiction of the CPA." Even the law department of the NFL-CIO admits the NLRB proceedings would be subject to CPA intrusion because they might result in

a substantial impact on the prices consumers pay. The AFL-CIO submitted a legal opinion on the matter which was included in the hearings on the House-passed bill.²

Has no one on the majority heard of a secondary boycott or the charges made by both General Motors and the United Auto Workers concerning, on the one hand, sabotage by workers that results in unsafe and higher priced cars, and, on the other hand, about harassment by management which results in such actions? Does the majority have no idea of what an NLRB unfair labor practice proceeding involves, or is there some reason to protect labor unions and not management?

The majority also arbitrarily says that Environmental Protection Agency proceedings involving water quality standards "are beyond the jurisdiction of the CPA," yet says that intervention in food plant inspections is covered as well as the use in those plants of unsafe additives. Does the majority think that all Americans get their water free, or that no food plant uses water to prepare its product? Does the majority think that water pollution control devices do not cost producers money which is added to the price of consumer goods—such as automobiles? The EPA, in its letter to me, recognizes this; who convinced the majority otherwise?

The majority says that Equal Employment Opportunity Commission proceedings "are beyond the jurisdiction of the CPA," yet says that a proceeding to determine whether a Federal inspector took a bribe is within the jurisdiction of the CPA.

Where was the majority when we debated the EEOC bill and the Equality of Rights Constitutional amendment? What happened to all the arguments about how discrimination in commerce depresses the economy to the detriment of consumers?

The majority says that Federal Communications Commission license renewal proceedings "are beyond the jurisdiction of the CPA," yet Civil Aeronautics Board route designation proceedings are subject to CPA intrusion. What is the rationale for this? What does the majority mean, then, when it lists "such important areas of consumer concern as the preservation of consumer choice and a competitive market" as interests of consumers which must be protected by CPA intrusion into agency proceedings and activities?

The majority says that the above described proceedings are exempted because "they do not involve marketplace transactions," and are therefore not interests of consumers.

There is no such criterion for exemption from CPA intrusion in the bill, nor one that remotely resembles this test. If the majority can so misread a bill that it has just drafted, what will the CPA do? How will our three fallible human commissioners interpret this faulty "legislative history"? The message they will receive is clear: Do what you darn well please in interpreting this bill?

INCOMPREHENSIBLE GUIDELINES

If the majority would look closely at sections 203 and 401(11) of the bill, they will see that the test of CPA intrusion is not simply whether proceedings or activities "involve marketplace transactions," but is a complex and circular set of guidelines that can be reduced to 13 words: The CPA may intrude in any Federal proceeding or activity of its choice.

In determining whether a proceeding or activity "may" result in an impact on consumer interests, the CPA will not attempt to determine if a marketplace transaction is "involved" (unless it relies on the majority views and ignores the bill). All the CPA has to do is issue an unchallengeable (see section 203) that the proceeding or activity "may" affect "substantially" the "substan-

tial concerns" of consumers "related to" a series of transactions "regarding" an all-inclusive laundry list of possibilities.

Before going into the laundry list, let me repeat for clarity's sake this convoluted and meaningless portion of the CPA guidelines we are about to vote on. The CPA, before intruding, must make an unchallengeable prediction prior to a fact-finding proceeding or activity that this proceeding or activity under sections 203 and 401(11)—

1. "May" result in a—
2. "Substantial" effect on a—
3. "Substantial concern"—
4. "Related to" a series of transactions—
5. "Regarding" an all-inclusive subject.

How one predicts a "substantial effect" on a "substantial concern" "relating to" something "regarding" something else is beyond me. But one thing is sure, that concern cannot, as the majority says, be limited to a case that "involves" a marketplace transaction.

Section 401(11) says that the concerns of consumers to be protected by the CPA must "relate to" (not involve) "any business, trade, commercial, or marketplace transaction," (not just marketplace transaction), and these affected, related concerns must be "regarding" any one of the following:

1. safety,
2. quality,
3. purity,
4. potency,
5. healthfulness,
6. durability,
7. performance,
8. reparability,
9. effectiveness,
10. dependability,
11. availability, or
12. cost of—
- a. real property,
- b. personal property,
- c. tangible goods,
- d. intangible goods,
- e. services, or
- f. credit,
- As well as:
13. preservation of consumer choice,
14. preservation of a competitive market,
15. prevention of unfair or deceptive trade practices,
16. maintenance of truthfulness and fairness in the
- a. advertising,
- b. promotion, and
- c. sale by a—
- (i) producer,
- (ii) distributor,
- (iii) lender,
- (iv) retailer, or
- (v) supplier of—

all of the property, goods, services, and credit mentioned above,

As well as—

17. Availability of full, accurate, and clear information and warnings concerning all of the above, and, finally,
18. Protection of the legal rights and remedies of consumers.

Thus, the question is not what is included in this confusing mess, but what could possibly be excluded. And the answer, of course, is that nothing is excluded if the CPA says it is included—the bill provides, and the majority views state, that such a determination by the CPA is unchallengeable. See section 210(e) (2).

If there is any doubt about the overextension of CPA's scope of authority, look at the one example the majority gives in an attempt to explain in some detail how this intrusion power works. They did not choose the Food and Drug Administration, or the Federal Trade Commission or any of a host of Federal agencies well known to consumers. They choose the Commodity Credit Corporation in the Department of Agriculture which deals extensively with exports of commodities by American companies to foreign buy-

ers. Where is the marketplace transaction involved here that is not involved in EPA water quality standard setting?

ALL-INCLUSIVE SCOPE OF AUTHORITY

The circumlocution in Section 401(11) becomes partially significant in relation to the informal deliberations subject to CPA intrusion under Section 203(b).

Section 203(b) provides that—

"Whenever the Administrator determines that the result of any Federal agency activity [other than a formal proceeding,] of which the Administrator has knowledge or receives notice, may substantially affect the interests of consumers, he may as of right participate for the purpose of representing the interests of consumers in such activity. In exercising such right, he may in an orderly manner and without causing undue delay * * * (1) present orally or in writing to responsible agency officials relevant information, briefs and arguments; and (2) have an opportunity equal to that of any person outside the agency to participate in such activity. Such participation need not be simultaneous, but should occur within a reasonable time."

Section 401(4) of the bill defines "agency activity" to mean "any agency process, or any phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process."

Even a cursory examination of these provisions makes it abundantly clear that the Consumer Protection Agency has been given unprecedented authority to participate, as of right, in virtually every activity and operation of virtually every executive branch department and agency, including regulatory agencies and wholly owned Government corporations.

The only exceptions are activities of the Federal Bureau of Investigation, Central Intelligence Agency, National Security Agency and the national security and intelligence functions of the Defense Department and the Office of Emergency Preparedness.

In responding to my survey of selected agencies, the Justice Department expressed considerable concern over the fact that its prosecutorial responsibilities were "activities" subject to CPA intrusion. The Justice Department's reply said:

"The bill's definition of 'agency activity' in section 401(4) fails to set any reasonable limits on areas of possible intervention by the Administrator * * *. In our view, this definition is at best imprecise, and implementation of Section 203(b)'s mandate under it would cause great problems for administrative agencies in general, and particularly for the Department of Justice in performing its prosecutorial functions. Since the Department would appear to be a 'Federal agency' within the meaning of Section 401(9), the Committee Print would guarantee the Administrator the right to participate in decisions concerning whether or not particular cases should be filed, settled, or appealed. No other Government official has that right at present, and for good reasons. The exercise of prosecutorial discretion is a delicate and sensitive task, best left to the branch of government chosen by Congress to conduct litigation involving the interests of the Federal Government. See 28 U.S.C. 516. * * * Section 203(b), however, would unnecessarily grant a statutory right to such participation, and, coupled with Section 203 (d)'s requirement that Federal agency's declarations to act in response to the Administrator's requests must be justified by a public written statement setting forth the reasons therefor, could require disclosure of the various sensitive matters, often told to the Department in confidence, underlying the decision. * * *"

The Secretary of Transportation also expressed concern regarding Section 203(b), as follows:

² See 1971 House hearings, at 257-258.

"The other major category of activities which would be subject to intervention under section 203(b) of the legislation is also rather difficult to establish with any degree of certainty. The proposed definition of 'agency activity' is so general as to encompass a wide range of activities under the many statutes which the Department administers* * *.

"Applying to the proposed bill a literal construction, it appears to us that section 203(b) thereof cuts across virtually every activity of this agency, formal or informal, that does not fall within its formal rule-making or adjudicative functions."

Numerous other activities of component agencies of the Department of Transportation, which would be affected by Section 203 (b) are set forth in the Congressional Record, July 25, 1972, pp. 25184-25187.

Federal departments and agencies are faced each day with the making of decisions in complex matters involving the rights of individual members of our citizenry. Although these proceedings are considered informal, the rights and interests involved are just as important to these persons as are those which are the subject of formal proceedings.

The interminable and costly delays which the public now endures in connection with both formal and informal Federal department and agency proceedings and activities are too well known to require documentation. Section 203(b) would add an additional barrier which would serve to further delay the final determination of the issues involved. By allowing the Consumer Protection Agency to participate fully as of right, in these informal activities and proceedings, the decision-making process of Federal departments and agencies might conceivably come to a grinding halt.

It is not my intention to propose that the Consumer Protection Agency be barred from participation in such activities, in a proper case. However, the determination of what is a proper case, and the time and manner of participation, must be either left to the discretion and judgment of the Federal department or agency which has the statutory responsibility for the conduct of such activities or the role of the CPA made more positive as was suggested by the Amicus amendment. To provide otherwise would be productive of nothing but mischief and the continuous disruption of the orderly processes of government.

HIDDEN SUPPLEMENTAL APPROACHES

There are approaches other than adversary advocacy that can be taken to perfect the consumer's right to participate in Governmental decisions that affect him.

The Comptroller General issued a legal opinion on July 24, 1972, to the Federal Trade Commission holding that the FTC could expend taxpayers' money to pay the costs of participants who are legally indigent (not necessarily without money themselves, possibly belonging to a protectionist group without adequate funds for the purpose.)

Two seldom-discussed provisions of this bill would, by statute, take that GAO opinion and expand it to cover all "Federal agencies," and all potential special interest participants—consumerists, environmentalists, taxpayers, women's liberationists, etc.

Section 405 would require all "Federal agencies" to greatly expand the public's right to participate in their proceedings, including the waiving of financial requirements where appropriate for participants who would suffer a financial burden. Section 403 applies specifically to the transcripts of public agency proceedings and the production or search for documents. It requires all "Federal agencies" to provide such transcripts at cost to anyone requesting them, and to reduce or waive, where appropriate, the costs charged for the document production or searches.

Perhaps one of the reasons these sections have not been very much discussed is the fact that they pertain to matters far beyond the interests of consumers, although they also concern the interests of consumers.

In any case, these provisions provide us with an indication that there may be viable alternatives to improve Governmental consumer protection efforts. The attempted perfection of public participation proposed in these provisions could be considered consistent with the type of advocacy proposed under the Amicus Amendment. But one has to wonder whether it is consistent with the adversary advocacy mandated in the reported bill, an advocacy that may discourage further public participation.

CPA, NYCCFA VERSUS EPA, EDF, UHRCFA

Let us take a hypothetical example based on a recent case that has been in and out of administrative agencies and the courts for more than nine years—and is still unresolved.³ The Federal Power Commission is conducting a proceeding to determine whether it would be appropriate to construct a power plant on the Hudson River to prevent an impending power shortage on the East Coast. The FPC, of course, is tax funded to take action in the public interest, including the interests of consumers of power on the East Coast.

The Environmental Protection Agency intervenes in the proceeding to object to the proposed construction on the grounds that it may create an ecological imbalance. The EPA, of course, is tax funded to take action to preserve the public's special interest in its environment.

The Consumer Protection Agency intervenes on behalf of East Coast power consumers, saying that they need the power and that construction of the plant will prevent a rise in power rates. The CPA, under the reported bill, would be tax funded to take action to represent the special interests of consumers, including their interests in fairly priced and available power.

A local branch of the Environmental Defense Fund now steps in to take the side of the EPA against the CPA, pointing out that the branch was a balance of \$12.00 in the bank account, and therefore is legally indigent and in need of tax funds to participate adequately in the FPC proceeding.

A New York City branch of the Consumer Federation of America, sensing a possible imbalance to the FPC hearing record on which a decision must be made, takes up the cudgels and demands tax funds to support CPA against the EPA and EDF.

This enrages the Upper Hudson River Branch of the Consumer Federation of America whose members are primarily consumers of recreational facilities that would be inundated if the power plant were sited as proposed. They demand to participate at government expense to support the EPA and EDF and oppose the CPA and the NYCCFA.

Four years after the introduction of voluminous environmental impact reports and consumer impact reports, the FPC comes to a decision that should have been reached in less than two years.

It decides not to allow construction of the plant at this time. In other words, it decides against CPA and NYCCFA and in favor of EPA, EDF and UHRCFA.

Does the process stop there? Not on your life. The reported bill would give the CPA statutory authority to take any Federal agency to court and, once again, challenge its fellow agency in the Judicial Branch.

Therefore, a suit is filed, CPA v. FPC, with

³ See Federal Power Commission Project No. 2338, 28 FR 2757, March 20, 1963; 33 FPC 428 (1965); Scenic Hudson Preservation Conference v. FPC, 354 Fed 2nd 608 (2nd Cir—1965), *Cert. den.*, 384 U.S. 941 (1966), 453 Fed 2nd 463 (2nd Cir—1971).

taxpayers paying for the attack, the defense and the courts' time and expenses. EPA, EDF and UHRCFA intervene on behalf of FPC at taxpayer expense, and NYCCFA and Consolidated Edison Company of New York (the power company) intervene on behalf of CPA.

The Justice Department has decided to use its Government lawyers to defend FPC, rather than to support CPA which must use its own government lawyers to appeal the action. But CPA manages to convince the Department of Interior to intervene on its behalf and against the FPC, EPA, EDF and UHRCFA, thus evening the score up a bit.

What does the court do? If it is smart, it will probably remand the case for further consideration by the FPC, thereby avoiding the issue for another six years as happened in the case on which this hypothetical is based. If this bill is passed, the hypothetical will no longer be hypothetical insofar as CPA is concerned, inasmuch as intervention by the new agency would be a definite possibility, if not a reality.

SUMMARY

I have stated on the Senate floor several times this year that I am basically in favor of the establishment of a Consumer Protection Agency to instill new vigor in Governmental efforts to protect consumers.

It would be disappointing to me to have to vote against such a bill. In 1970, I voted with reluctance against a bill that would have created and independent Consumer Protection Agency.

That dissenting vote has been vindicated. The Committee on Government Operations, after a thorough review of the 1970 bill, rejected and completely rewrote its major provisions because they were fraught with dangers and inadequacies.

But there is little solace in the vindication when I know that we have reported a bill which will have to undergo complicated major surgery by the full Senate at one of its busiest times. Never mind that its purposes are allegedly beneficent. Its potentialities have the seeds of malignancy which it would be folly to ignore.

This bill, as presently written, will do violence to the administrative process, and I cannot do in my legislative capacity that which will shame me afterwards in my private capacity.

The letters from the Environmental Protection Agency and the Federal Mediation and Conciliation Service, referenced above, follow, together with the letter from the Department of Justice.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 18, 1972.

HON. JAMES B. ALLEN,
Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: This is in response to your letter of July 26, 1972 requesting our comments on how S. 1177, a bill to establish an independent Consumer Protection Agency (CPA), would relate to the Environmental Protection Agency (EPA). You specifically requested information as to which of our proceedings or activities would fall within the purview of Sections 203 and 204 of the proposed legislation. Our comments on this legislation refer to the Committee Print of S. 1177, dated June 20, 1972.

Section 203 of S. 1177 provides that the CPA may intervene or participate in each of three kinds of agency procedure or activity provided only that CPA finds, in its discretion, that that procedure or activity "may substantially affect the interests of consumers." These categories are, first, "any Federal agency proceeding which is subject to the provisions of section 553, 554, 556, or 557 of title 5, United States Code," second, "any Federal agency proceeding . . . which is conducted on the record after opportunity for

an agency hearing," and third, "any Federal agency activity to which . . . [the above two categories do] not apply". According to the statute, "agency activity" means any agency process, or any phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process".

The first category might allow CPA participation in all EPA rulemaking under 5 U.S.C. § 553 and in all EPA adjudications under 5 U.S.C. § 554.

The Administrative Procedure Act describes a "rule" as including "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy". 5 U.S.C. § 553 requires all EPA rules, except those relating to agency management or to grants and contracts, to be published in the Federal Register, and we interpret the Act as allowing CPA participation in the formulation of any rules that must be published.

The most significant grant or rule-making authority to EPA is contained in the Clean Air Act, 42 U.S.C. § 1857 *et seq.* Under Section 107 of that statute, the Administrator is authorized to establish air quality control regions throughout the country, and, under Sections 108 and 109, to set both primary and secondary air quality standards for any pollutant. States must then submit implementation plans for achieving these standards for the air quality control regions over which they have jurisdiction. On approval by the Administrator, a plan becomes enforceable under Federal law pursuant to Section 113.

Under Section 110, if the Administrator finds any plan inadequate to attain these standards, he can, and must, disapprove it and issue a new plan himself. In addition, the Administrator may set emission standards for new stationary sources of air pollution, Section 111; for hazardous air pollutants, Section 112; for aircraft, Section 231; and for new motor vehicles, Section 202. Pursuant to Section 211, he may regulate or ban any additive in motor fuel. Under Section 114, he has broad power to set rules to require polluters to keep records and submit to various kinds of inspections, and in Sections 206-208, which concern new motor vehicles, this power is especially detailed. There is a limited authority in Section 202 to extend the date for compliance with automobile emission standards.

Under Section 10(c) of the Federal Water Pollution Control Act, 33 U.S.C. § 1151 *et seq.*, the Administrator has the power to set water quality standards for a State that has failed to do so itself. Under Section 11 and Executive Order 11548, (35 F.R. 11677) he has authority to regulate the discharge of oil, and under Section 12 and Executive Order 11548, the power to designate hazardous water pollutants. He also must, pursuant to Section 13(b), prescribe performance standards for toilets on ships and boats.

Under Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135d, the Administrator may set standards and procedures for the registration of pesticides, and under Section 406 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 346, he may set maximum levels for pesticide residues on food. Finally, under Section 209 of the Solid Waste Disposal Act, 42 U.S.C. § 3254(c), EPA may set guidelines for the disposal of solid waste which are binding on Federal agencies through Section 210. Any rule-making activity under any of these statutory provisions might be subject to CPA intervention.

S. 1177 might also allow CPA intervention in any agency proceeding which is conducted on the record after opportunity for an agency hearing, both by its explicit language and through its reference to 5 U.S.C. § 554, which governs such proceedings. EPA conducts such

hearings in connection with the cancellation of pesticide registrations or the refusal to register pesticides under Section 4 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 135b, and if a standard for pesticide residues on food is challenged, pursuant to Section 408 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 346a.

The provision in S. 1177 for intervention in other agency activity" would allow CPA participation by oral and written argument and to such extent as any outside person might participate in any other EPA activity provided that the CPA determined that it had some connection with consumer welfare. This language, taken literally, might allow CPA participation at any stage of any EPA enforcement proceeding; in planning for future EPA standards and for future EPA regulatory and testing policy; in decisions on how EPA spends its research funds; and in setting standards for making EPA grants for any purpose and in deciding to make any award under those standards. In addition, EPA has the responsibility under Executive Order 11574, (35 F.R. 19627), for advising the Corps of Engineers on when permits to discharge matter into the waters of the United States would be consistent with water quality standards, and the responsibility under Section 309 of the Clean Air Act to comment on the effect of actions by other Federal agencies on matters within its areas of expert knowledge. Since such advice and comments might affect the interests of consumers, CPA participation would also be possible here.

I hope that this information will adequately demonstrate to you and the Government Operations Committee the extent to which the activities of the Environmental Protection Agency would be affected by the operation of the proposed CPA. If I may be of any further assistance, please so advise.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

FEDERAL MEDIATION AND CONCILIATION SERVICE,

Washington, D.C., June 19, 1972.

HON. JAMES B. ALLEN,
Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR SENATOR ALLEN: This is in reply to your letter of June 6, 1972 regarding S. 1177 and its possible effect on the Federal Mediation and Conciliation Service.

In response to your two categories of inquiries our response is as follows:

1. Formalized proceedings

It does not appear that the activities of the FMCS fall within the purview of the Administration Procedures Act (5 U.S.C., sections 553, 554, 556 or 557) or within the scope of sections 203(a) or 401(5) of the proposed legislation.

In general, the activities of the FMCS center on the following:

A. Informal mediation efforts which are not subject to the Administrative Procedures Act. Such activities are not "conducted on the record after opportunity for agency hearing * * *" in the language of section 203(a).

B. Arbitration matters concerned with establishing the procedures for the administration of the National Roster of Arbitrators, and related activities.

2. Informal activities

Since its inception in 1947, the Service has insisted on maintaining in the strictest confidence all case files and information disclosed in the course of its labor-management collective bargaining activities. Outside persons are permitted no participation in or access to this information. The acceptability of FMCS personnel as third party neutrals is founded upon this confidentiality. It, in turn, permits that candor by the parties which is so essential to the avoidance of

labor disputes and the successful settlement of such disputes as do arise.

I have serious concern insofar as the proposed legislation may be interpreted in a way so as to grant the Consumer Protection Agency rights to intervene in these delicate negotiations. If this legislation were so interpreted, there is no doubt that S. 1177 would have an adverse impact on the mission of the Service.

In light of the possible future implications of this proposed legislation, it is respectfully requested that the Service be excluded from the provisions of S. 1177.

Thank you for this opportunity to state the position of the Federal Mediation and Conciliation Service on this important matter.

Sincerely,

J. CURTIS COUNTS,
Director.

OFFICE OF THE
DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 20, 1972.

HON. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: This is in response to your letter to the Solicitor General concerning the activities of this Department which would be affected by S. 1177, the Consumer Protection Organization Act of 1972. At the request of Mr. Charles Mitchell of your staff, this letter expresses generally the views of the Department of Justice on S. 1177 (June 14, 1972 Committee Print).

In the Department's view, the proposed Agency's powers of advocacy and intervention in Federal administrative agencies' decision-making are too broad, and pose a threat that the orderly and effective dispatch of the public business in the public interest might be significantly disrupted. For this reason, the Department strongly prefers the more narrowly drawn provisions governing the proposed Agency's interventionary powers which are contained in H.R. 10835 as it passed the House of Representatives last year. A comparison of provisions of the Committee Print and H.R. 10835 in this important area may help illuminate some of our concerns.

Section 203(b) of the Committee Print gives the Administrator the power to participate in any "Federal agency activity" which may substantially affect the interest of consumers. The bill's definition of "agency activity" in Section 401(4) fails to set any reasonable limits on areas of possible intervention by the Administrator:

"Agency activity" means any agency process, or any phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process[.]"

In our view, this definition is at best imprecise, and implementation of Section 203 (b)'s mandate under it would cause great problems for administrative agencies in general, and particularly for the Department of Justice in performing its prosecutorial functions. Since the Department would appear to be a "Federal agency" within the meaning of Section 401(9), the Committee Print would guarantee the Administrator the right to participate in decisions concerning whether or not particular cases should be filed, settled, or appealed. No other Government official has that right at present, and for good reasons. The exercise of prosecutorial discretion is a delicate and sensitive task, best left to the branch of government chosen by Congress to conduct litigation involving the interests of the Federal government. See 28 U.S.C. § 516. This is not to say that the views of the Administrator should not be heard by those exercising this discretion. At present, the views of administrative agencies on matters involving the regulatory statutes

they enforce are actively sought by the Department as a matter of course. There is no reason to think that the Department would not be equally eager to hear and consider the views of the Administrator when prosecutorial decisions are being made which appear to involve the interests of consumers. Section 204(b), however, would unnecessarily grant a statutory right to such participation, and, coupled with Section 204 (d)'s requirement that Federal agency's declinations to act in response to the Administrator's requests must be justified by a public written statement setting forth the reasons therefor, could require disclosure of the various sensitive matters, often told to the Department in confidence, underlying the decision. At the very least, therefore, the Department would urge that the provisions of the bill be made inapplicable to prosecutorial or appeals decisions made by appropriate officers of the Department.

The Department is also opposed to the broad reach of Section 204(a) of the bill, which gives the Administrator "standing to obtain . . . judicial review of any Federal agency action reviewable under the law and to intervene as of right as a party in any civil proceeding in a court of the United States involving the review or enforcement of a Federal agency action, if he intervened or participated in the Federal agency proceeding out of which the action arose or, if he did not so intervene or participate, the court finds that the result of such action may substantially affect the interests of consumers."

It is unclear whether this provision will permit the Administrator, without the authorization of the Solicitor General, to file a petition for a writ of certiorari in cases in which he has become a party. With certain narrow statutory exceptions (see 28 U.S.C. 2323, 2350), it is a well-settled practice of many years standing that only the Solicitor General appears for the federal government in the Supreme Court. One aspect of this practice is that agencies, including independent agencies, cannot seek Supreme Court review without the authorization of the Solicitor General. This practice, we believe, rests upon sound considerations of public policy. We think it would create serious problems for all government litigation before the Supreme Court if the Administrator were singled out to permit him to present his own cases to the Supreme Court without the authorization and supervision of the Solicitor General. The interests that the Administrator would represent, important as they are, seem no less important than the interests represented by many other government agencies; and the policy considerations that require those agencies to appear in the Supreme Court through the Solicitor General are, in our judgment, equally applicable to the Administrator of the Consumer Protection Agency.

In contrast to the unfettered grant of authority to the Administrator to obtain judicial review and to intervene as a party in a court proceeding involving the review or enforcement of a Federal agency action, we note that there is no provision in the Committee Print comparable to H.R. 10835's Section 204 (c)(2), which allows the Administrator to appear as *amicus curiae* in other actions to which the United States or any Federal agency is a party. We believe that the Administrator's authority (or lack of it) to participate in judicial proceedings not involving the review or enforcement of Federal agency action should be specifically set forth.

The Committee Print's grant of compulsory information gathering powers to the Administrator also seems excessively broad. Both the Committee Print and H.R. 10835 authorize the Administrator to use in any Federal agency proceeding to which the proposed Agency is a party to all types of compulsory process and discovery devices available to any party to the proceeding under the

terms of the statute governing the agency conducting the proceeding. There is no difficulty with this provision, for it only guarantees that the Administrator, after intervention, will have the same rights to discovery and to the use of the host agency's compulsory process as all other parties to the proceeding. But the Committee Print goes further, and extends in Section 203(e) these same rights to the Administrator whenever he is participating in any Federal agency "activity". Given the great latitude of the bill's definition of agency "activity", which has been previously noted, granting such rights to the use of compulsory process and other discovery devices in advance of any agency proceeding would give the Administrator an advantage not afforded any other person or official, and would jeopardize the host agency's ability to regulate effectively in the public interest. Moreover, such powers do not appear necessary for the new Agency to perform its advocacy function, since Section 207(c) would guarantee the Agency's access to all information in the hands of other Federal agencies, and since all the powers in question would become available to the Agency as soon as a formal proceeding had been commenced.

For similar reasons, the Department would recommend the deletion of Section 207(b) of the Committee Print in its entirety. In essence, Section 207(b) would give the Administrator the right to compel any person who is engaged in a trade, business or industry affecting commerce and whose activities substantially affect what the Administrator determines to be the interests of consumers to answer interrogatories under oath "concerning such activities and other related information." The Department regards this proposal as unsound and unnecessary. The proposal is unsound, because it is at odds with the basic premise of the legislation, which, as we understand it, is that the interests of consumers need more adequate representation in the processes of Federal administrative agency decisionmaking. To our knowledge, the proposed Agency has never been intended to be a wide-ranging investigative agency, empowered to scrutinize the business practices of any person or business entity whose activities might affect the interests of consumers. Section 207(b) would give to the Administrator, who would have no substantive regulatory responsibilities, interrogatory authority far in excess of that possessed by any other Federal official, department or agency similarly situated. The grant of such authority is also unnecessary, for by virtue of the discovery procedures made available to the Administrator in any agency proceeding by Section 203(e), and Section 207(c)'s guarantee of access to information already in the possession of other agencies, the Administrator already has all the information gathering powers he would reasonably need to give consumer interests the high quality of representation and advocacy that they deserve.

The Department of Justice is opposed to the enactment of S. 1177 in its present form. Sincerely,

RALPH E. ERICKSON,
Deputy Attorney General.

PROPOSED AMICUS ALTERATION IN POWER

Mr. ALLEN. Mr. President, the amicus amendment would apply the same criteria to adjudications as it does to rule-making and Federal agency "activities"—it would allow the CPA, as a matter of unchallengeable right to present orally or in writing its case, then, prior to final agency action, allow the CPA the opportunity to make comments based upon the data, views, and arguments presented.

All adjudications under subsection 203(a), it should be noted, will be rec-

ord proceedings, since a hearing on the record is required by the Administrative Procedure Act.

This approach is more consistent with the "One Government" approach favored by some members of the committee; yet the "last word" opportunity provides a more effective means of advocacy than would be enjoyed by any of the parties to the adjudication proceeding.

It would also avoid the specter of the Government presenting two prosecutors—with potentially differing views—in a sanction-oriented adjudication, or of the Government—that is, the CPA—being cross-examined and impeached.

ADMINISTRATIVE APPEALS, RATHER THAN BURDENING THE COURTS

The amicus amendment provides, as a matter of unchallengeable right, that the CPA may seek an agency rehearing or reconsideration of an action if any person could seek such action. From a one-government point of view, this is far more effective and far less disruptive than the present bill which does not provide for this power as a matter of right.

Granting the CPA the automatic right to seek judicial review of Federal actions, as does present section 204, will result in "United States against United States" court cases. This is not administration of the laws as required by the Constitution, but a division of the Government that must be resolved by the overburdened courts. This not only is going to make for multiplicity of agencies; it is going to make for a multiplicity of lawsuits for a judiciary that is already overburdened. We hear that complaint from the Justices of the Supreme Court—the Chief Justice in particular—and we see it from the fact that we provide for the appointment of dozens upon dozens of additional Federal district judges.

So that the courts very definitely are overburdened; and we see that in the crime statistics, from which the case is made that the overburdened courts delay justice and delay the imposition of penalties on those who violate the laws. This, of course, would add many hundreds, if not thousands, of cases to an already overburdened judiciary.

If it can be avoided, it should be. In the extremely rare instances in which this has happened, the courts have usually been divided and have often expressed not only their confusion, but their annoyance over the fact that the executive branch could not administer the law with one voice.

Grave problems relating to due process, equal protection, and realistic court burdens should be considered by the Judiciary Committee before any such proposal is enacted.

Has no one read Mr. Chief Justice Burger's state of the judiciary speech August 14, 1972, calling for such a "judicial impact" report on legislation of this type?

The issue is adequate consumer representation in the Federal agency process, and all efforts to assure such representation would best be made toward improving the administrative process rather than challenging it.

Once Congress takes the unprece-

dented step of granting one Federal agency authority, as a matter of right, to challenge the actions of another court, the whole principle of Federal agency expertise comes into question.

At present, the courts generally consider the actions of Federal agencies as being clothed with congressionally ordained expertise.

Two Federal agencies clothed with such congressionally ordained expertise—one in the public interest, the other in the special consumer interest—would result in considerable judicial turmoil.

And out of this turmoil will come judge-made law. We already have too much of that.

DEMOCRATIC PLATFORM

There is an interesting plank in the Democratic platform that I might point out. Even the liberal Democratic platform does not endorse CPA advocacy in the Federal courts or CPA appeals of Federal agency actions.

This is appropriate, because, again, the issue is perfecting the administrative forums of the Government, not challenging these or taking other steps that would further burden the courts with duplicative efforts.

Under the present section 204 of the bill, all court appearances as of right by the CPA will be in the presence of another Federal agency, and the CPA would be allowed to have a role of full party litigant.

In instances where the CPA would be seeking judicial review, it would be the CPA versus another Federal agency, thus raising the issue whether such intergovernmental fighting would best be resolved outside the court.

In all other court proceedings under the bill, the issue must involve the review or enforcement of a Federal agency action.

Thus, the CPA will be on the side of the Federal agency if it did not seek judicial review. Such a case, for example, would be CPA plus IRS versus John Q. Citizen—a duplication in Federal efforts if full advocacy is envisioned for both the CPA and the forum agency concerned.

SUGGESTED MANDATORY AMICUS CURIAE APPROACH

The amicus amendment does not say that the CPA should never appear in court. On the contrary, it envisions a comprehensive and effective role for the CPA in the courts.

The amendment would grant the CPA, as a matter of unchallengeable right, authority to present, orally or in writing, an amicus curiae argument to assist the court in any determination involving the review or enforcement of any Federal agency action which, in the unchallengeable opinion of the CPA, might result in substantially affecting the interests of consumers. That is the approach that would seem to me to be more logical, to assist the Federal agency involved with the expertise it has as a Consumer Protection Agency rather than to take on an adversary role against the sister Federal agency.

The CPA need not have participated in the Federal agency action in order to present its views on the matter in

court, and the court cannot refuse to admit the CPA.

I use "CPA" here, as I pointed out the other day in discussing the bill, but I do not know whether we have had any protests from the certified public accountants on the use of the "CPA" term. When we had the same term in the Committee on Agriculture and Forestry, when it was working on the pesticide bill, we did receive protests from the certified public accountants on the use of the term "commercial pesticide applicator—CPA" because they did not want to be confused with the term "commercial pesticide applicator." I do not know what their views will be in confusing them with the "Consumer Protection Agency." But in our Federal bureaucracy, we are so prone to reduce everything down to alphabet soup that we will have the certified public accountants confused with the CPA—Consumer Protection Agency. Whether they will take offense at that is a matter of opinion, I assume. I would feel that the certified public accountants would possibly object more than the Consumer Protection Agency would.

This would appear preferable, from a "One Government" viewpoint, to having a CPA attack its sister agencies or duplicate their efforts as full party litigants.

This would also enable the CPA to effectively conserve the valuable time of its advocates and avoid placing an unnecessary burden on the courts.

POACHING PRIVATE RIGHTS

The Federal Government should concentrate more on doing for its citizens what they cannot do for themselves, rather than patronizingly poaching private rights, thereby depleting them.

We can guard, perfect, and expedite the exercise of private rights, but we should not make the mistake of thinking that we do this by letting the Government exercise these rights either by proxy or by predilection.

The private right to challenge the actions of the Federal Government is a measure of the liberty of this country. Extending that right of challenging the Government, to the Government itself, in an area as broad and unchartered as the "interests of consumers," will lead to an erosion of that liberty and a division of that Government. This is extending to the Government itself a right that should repose in the individual citizen. The Government has enough rights already. Let us not give it still more rights for the Federal agencies to fight among themselves.

I am surprised that many proponents of this bill cannot see the distinction between citizens exercising privately the legal rights given to them by the Constitution or Congress, and the Government itself attempting to exercise these rights in the name of those citizens for whom the rights were defined.

There is a proportion of the American citizenry which vocally disagrees with the current way the country is handling the situation in Vietnam. This is their right, and, to them, at least equal to the rights of consumers that all would like to see protected.

But who, other than the most zealous proponents of this bill, seriously could

support creating an independent Peace Protection Agency with absolute discretion to attack the Government in a Federal—or possibly a Hanoi—forum?

SUMMARY

Let me briefly summarize the major provisions of the amicus amendment.

This is a middle-of-the-road trial period approach that is consistent with providing a new and untried agency the opportunity for healthy growth and an orderly progression of powers, rather than responsibilities beyond its initial capabilities.

First. The amicus amendment would allow CPA advocates to enter, as a matter of unchallengeable right, all agency and court proceedings covered by the present bill. No restriction on that.

Second. The amendment would allow the CPA to make an initial argument in any other agency's deliberations in much the same manner as an amicus curiae. That is, the CPA would not become embroiled in the day-to-day, month-to-month, and year-to-year legal infighting of an agency proceeding.

Third. Instead, under the amendment, the CPA would be allowed as a matter of right to make the final comment on the whole record and to suggest a course of action.

Fourth. There would be no right of appeal, but the CPA would have the unchallengeable right to petition for an agency rehearing if anyone else could.

Fifth. The CPA would be authorized to enter as of right any court proceeding covered by the present bill. But it would not enter as an unnecessary and burdensome party litigant; it would enter as a friend of the court, an amicus curiae.

OTHER ADVOCACY PROVISIONS OF BILL UNCHANGED

All other rights and duties in sections 203 and 204 of the present bill remain substantially unchanged. Thus, under the present bill:

First. Subsection 203(c) relating to rules of practice would remain unchanged except for the substitution of the word "participation" for the word "intervention."

Second. Subsection 203(d) relating to CPA petitions for Federal action would remain unchanged.

Third. Subsection 203(e) relating to full party use of discovery powers would be deleted as inappropriate.

Fourth. 203(f) relating to petitioning the CPA for action would remain unchanged.

Fifth. Subsection 203(g) relating to advocacy in State and local proceedings would remain unchanged except for a clarification to the effect that the CPA's advocacy must be in the same general manner as in Federal proceedings.

Sixth. Subsection 203(a), relating to formal agency proceedings, and section 204, relating to CPA activities in courts, would be dealt with—as mentioned in detail earlier—in one subsection of the amendment, new 203(a).

Seventh. Subsection 203(b) of the present bill relating to informal activities would be treated separately as mentioned earlier under amendment subsection 203(b).

Mr. President, this is the so-called

amicus amendment. In the judgment of the Senator from Alabama, it would greatly improve the entire concept of the bill. And it would improve it to such an extent that the Senator from Alabama would be willing to support the bill if the amendment were agreed to. If the amendment were not agreed to, the Senator from Alabama would feel that it would be his duty to vote against the bill.

Mr. President, I yield the floor.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House insisted upon its amendment to the bill (S. 3507) to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. GARMATZ, Mr. LENNON, Mr. DOWNING, Mr. MOSHER, and Mr. PELLY were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 14267) to provide for the disposition of funds appropriated to pay a judgment in favor of the Delaware Tribe of Indians in Indian Claims Commission docket numbered 298, and the Absentee Delaware Tribe of western Oklahoma, and others, in Indian Claims Commission docket numbered 72, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 15883) to amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. CELLER, Mr. DONOHUE, and Mr. SMITH of New York were appointed managers on the part of the House at the conference.

CONSUMER PROTECTION ORGANIZATION ACT OF 1972

The Senate continued with the consideration of the bill (S. 3970) to establish a Council of Consumer Advisers in the Executive Office of the President, to establish an independent Consumer Protection Agency, and to authorize a program of grants, in order to protect and serve the interests of consumers, and for other purposes.

Mr. BROCK. Mr. President, on September 15 I received a "Dear Colleague" letter which places in issue several questions on S. 3970, the Consumer Protection Organization Act.

This "Dear Colleague" letter is a voluminous brief. I could spend an hour or two merely reading its 14 legal-size pages of mostly single-spaced copy.

I do not propose to do that. Instead, I should merely like to list the major

points contained in this brief, and present some clarifying observations on them. If this brief foreshadows what we are to expect in the way of consumer advocacy, I think we can expect some rather serious problems ahead.

First, the brief states that one of the major amendments to be proposed for this bill will be the amicus amendment, and that the administration opposes the amicus amendment.

This information must have originated in a personal conversation with a representative of the administration, because I have never heard of Presidential antagonism toward the Senate amicus amendment.

What I have heard, and read, are the public statements by the administration in opposition to the Senate bill without substantial modification.

Second, the "Dear Colleague" brief tells us that both the Democratic and Republican party platforms support the establishment of a Consumer Protection Agency.

I do not feel that this statement is correct in its entirety. Neither platform supports CPA appeals of Federal actions to the overburdened courts. Neither platform supports CPA intervention in the proceedings of the overburdened Federal courts. Neither platform supports CPA intervention in State agency proceedings. Neither platform supports CPA intervention in local agency proceedings. Neither platform supports CPA intervention in the State court proceedings. Neither platform supports CPA intervention in local court proceedings. I am told that these subjects were discussed by the platform committees, but they would not come out in support of them.

In fact, the following language appears in the Republican plank, after citing support for the creation of the CPA. And I quote: "We oppose punitive proposals which are more antibusiness than proconsumer." I am told that this language refers to the unamended bill we now have before us.

By the way, I, too, support the creation of a CPA—let me make that clear—but I cannot support all of the radical powers proposed in this bill.

Third, the brief says that this bill will have no effect on the jurisdiction or authority of any Federal department or agency.

This is clearly wrong. Let me give you page and verse on several of the hundreds of ways this bill will affect jurisdiction and authority.

The bill would, and I quote, "abolish" one entire agency and all of the titles of its employees. See section 105. The Agency is the President's Office of Consumer Affairs which was created by authorized Executive order and which is headed by Virginia Knauer.

I understand that many of the more avid supporters of this bill outside this Chamber do not respect Mrs. Knauer's capabilities, and indeed have called for her resignation because she opposes many of the provisions of this bill. But I cannot see how we can constitutionally fire a Presidential adviser and strip her of her title, even if the more zealous sup-

porters of this bill wish us to do so. We cannot "abolish" Mrs. Knauer, like it or not.

I might say for myself that I have found Mrs. Knauer to be a person of enormous ability, dedication, and integrity—a person who is constantly dedicated to the consumers and to the public interest.

The bill requires that the President of the United States issue consumer impact reports. See section 101.

The bill would require all Federal agencies to issue consumer impact statements. See section 402.

The bill would explicitly strip the Office of Management and Budget of several of its powers, as to OMB's actions under the Federal Reports Act—see section 404—and as to its actions in relation to agency budget requests—see section 202(b).

The bill would subject Federal agencies to the unchallengeable CPA orders for copies of any desired information in their files, with certain few exceptions. See section 207(c).

The bill would require Federal agencies to change their rules of procedure to accommodate a series of unprecedented powers about which many agencies have publicly been alarmed. One need only read the Justice Department opinion on this bill's disruptive advocacy powers to find a refutation of the claim that this bill will not affect any agency's authority.

The bill even goes beyond consumer protection and would force all Federal agencies to restructure all proceedings of whatever public nature to allow for increased public participation, including participation at taxpayers' expense—on any issue. See section 405.

The list could go on and cover the length of the bill. But by now it should be clear that the brief is clearly in major error.

Fourth, the brief says that the CPA, under this bill, would not be able to compel any agency to take any action.

Among the many actions that the CPA will be able to force other agencies to take are the following:

It can force Federal agencies to allow for unprecedented and far-reaching CPA rights to participate in both formal proceedings and internal deliberations under sections 203 and 210(e) (1) (A).

It can force Federal agencies to change its rules of practice in accordance with these unprecedented rights under sections 203(c) and 210(e) (1) (A).

It can force agencies to go to court. See section 204.

It can force agencies to give it general or specific notice about its actions and proposed actions under section 205.

It can force Federal agencies to hand over any desired documents in its files, with certain few exceptions under section 207(c).

It can force Federal agencies to issue consumer impact reports under section 402.

The brief says that, as a safeguard, the CPA will not be able to overrule, veto or impair any Federal agency's final determinations.

No party can overrule an agency's final determinations. Only a court can do that. The CPA is given automatic standing to get a court to overrule such determinations. See section 204.

Therefore, saying that this is a safeguard, is like saying, "Don't worry about that madman with an ax—he's too weak to do anything without the aid of the ax which I supplied him with."

Sixth, another safeguard listed in the brief is that the CPA must conform to the rules of procedure of the agency holding a proceeding in which the CPA intrudes.

Discretely not mentioned is the little detail concerning the fact that all such agencies must rewrite these rules of procedures in consultation with the CPA to accommodate far-reaching intrusion powers; and, if the CPA does not like the way these rules are written, it can take the other agency to court under sections 203(c), 204, 210(e) (1) (A).

Again, the brief tells us that, to prevent arbitrary, capricious or vindictive intervention, the determination by the CPA that there is a substantial interest of consumer at stake would be subject to "ultimate" judicial review if there is prejudicial error.

Here the brief is saying in very sophisticated and misleading language something like the following:

I will give an ax to someone who may turn out to be a madman. But don't worry, I will tell him only to swing at people whom he thinks are acting so as to affect the interests of consumers. If you get your head split open and you can prove this injury to a court *after the fact*, and you can also prove that you were doing nothing that substantially affected the interests of consumers, we'll tell the CPA that it shouldn't have swung on you.

That is, the bill does indeed provide for so-called ultimate judicial review.

But ultimate judicial review means, under section 210(e) (1) (B), that a party improperly affected by the CPA intrusion can get court relief only after the proceeding is entirely over—which may be years—and only on the grounds that there was prejudicial error as a result of this intervention.

This right would only apply to a full, formal party in a formal adjudication—if you were not a party and you unexpectedly got the ax, too bad. If the proceeding was informal, too bad.

Eighth, the brief observes that "antitrust law today often frustrates industry self-regulation" and that in many instances the consumer interest in maximizing safety—through self-regulation—would clearly outweigh the consumer interest in seeing that the antitrust laws are enforced to the letter. In such cases, the CPA would use its extraordinary powers to aid businesses.

What the brief is saying is that, if the CPA agrees with a voluntary action that violates the antitrust laws, it will help business violate the law and get away with it. How egalitarian can you get?

Mr. President, when you think about this, you have to realize that the CPA could probably be successful in such a shocking move. It has far more discretionary powers than the Justice Department or the FTC which it would be at-

tacking if they dared attempt to enforce the letter of the law as they are supposed to.

Ninth, the brief predicts that the amicus amendment would destroy the capability of CPA to intervene and participate effectively in the administrative process.

The proper question does not concern the capability of the CPA but is: Will consumer interests be fully and adequately represented under the amicus amendment? The answer is "Yes." Full and complete input of concern of the consumer would be permitted, and the CPA would be permitted in every Federal agency proceeding to comment on all data, views, and arguments of all other persons. The CPA would be authorized expressly to have the last word—to comment after all other persons have completed their presentations.

What this boils down to is this: Is this bill to protect the interests of consumer by assuring that their views are considered? Or, is this bill to protect the interests of a Federal CPA to disrupt orderly procedures?

Tenth, the brief observes that an amicus curiae is merely an interested outsider who can ordinarily do no more than submit written briefs, or at most make a single argument, generally at the discretion of the last agency or court.

This statement is irrelevant, but perhaps of interest to first year law students. Defining amicus curiae does not explain the amicus amendment. The amicus amendment would permit, at the discretion of CPA: first, presentation of evidence; second, rebuttal; third, notice of agency action; fourth, an agency hearing and decision on the record; fifth, independent investigation powers; and sixth, submission of the entire record for final summary comments by CPA prior to closing the record.

The CPA can therefore adduce evidence, petition the agency to make discovery, and make full and complete final arguments to the agency. If the action is appealed, the CPA may as of right, not at discretion at the court, submit all relevant and material information for the court's consideration of the interests of consumers.

Eleventh, the brief says that most Federal agency proceedings are highly technical and the CPA must be given authority to effectively develop its case.

The amicus amendment would permit CPA to submit highly technical information and make highly technical arguments and to make them last. What this present bill authorizes is intrusion by a thinly spread CPA into highly technical agency proceedings to develop its expertise at the cost of orderly procedure.

Twelfth, the brief states that determinations by CPA that intervention as a party is necessary to represent adequately the interests of consumers will be subject to judicial review.

This is not a correct interpretation of the language of the bill as I read it. Section 210(e) (2) prevents any effective review of CPA determination by saying, and I quote:

A determination by the Administrator that the result of any agency proceeding or activ-

ity may substantially affect the interests of consumers or that his intervention in any proceeding is necessary to represent adequately the interests of consumers shall not be a final agency action.

Thirteenth, the brief says that the bill gives the CPA strong incentives to participate in agency proceedings only to the extent necessary.

The bill also contains a limited budget coupled with unbridled authority to intercede in agency activities. The budget not being coextensive with the authority, there is a built-in temptation for CPA to opt for controversial visibility rather than persuasive representation in order to make a name and justify more funds. No agency should be so tempted.

Fourteenth, the brief indicates that the amicus amendment would not provide a grant of authority at all since every Federal agency can already be an amicus.

Every Federal agency can now be an amicus curiae at the discretion of the host agency. The amicus amendment removes that discretion and permits participation by CPA on its own unchallengeable determination while at the same time increasing CPA participation, over that of an amicus curiae.

Fifteenth, the brief says that the amicus amendment is contrary to the trend of increasing ability of third parties to intervene in agency proceedings.

The writers apparently desire to co-opt the rising ability of consumers to represent themselves. They would displace private representation of consumers by sheer inertia. The amicus amendment would compliment these private representatives, who in their area of expertise, better represent the interests of consumers than could any Federal agency—CPA included. It would not, as required by the present bill, replace them or beat their ears back if they dared oppose the CPA.

Sixteenth, the brief says that the amicus approach has already been considered and rejected three times.

CPA-type legislation has been considered in every Congress since Senator Kefauver, from my own State, introduced such a bill in 1959. Continued rejection of CPA-type legislation is no argument against the need for such legislation. Similarly, past rejection of a different amicus-type approach to a different bill does not argue against acceptance of this new amicus amendment by this Senate now.

Seventeenth, the brief says that the amicus amendment would bar the CPA from appealing any administrative decision to the courts, limiting it to seek only a rehearing by the very agency which rendered the decision in the first place.

This is all any other person can now do in the many administrative proceedings which are "committed to agency discretion." This bill is intended, so its supporters say, not to change the rights of parties in those proceedings. CPA should be in like position. However, CPA is authorized under the amicus approach to participate in any court involving review or enforcement of Federal agency action. The amicus amendment requires an agency or a reviewing or enforcing court to admit and to consider consum-

ers interests whenever CPA decides that their interests may be affected substantially.

Eighteenth, the brief exclaims that what the CPA needs is the right to participate as a party.

We are not considering a bill to aid CPA. We are considering a bill to aid and protect the consumer. The consumers' needs are under consideration. And, what the consumer needs is an input into the administrative process, so that his views and his needs are heard and considered.

Nineteenth, the brief says that the amicus amendment attempts to make CPA appear "more than equal" in one trivial respect in justification for making CPA less than equal to parties in many vital respects.

The right to have the last word, to make the final comments on all the evidence, all the data, all the exhibits and all the testimony of all parties is not a trivial right. The amendment preserves approximate parity for CPA in all other respects and in addition grants the significant right to "get in the last word." All this with minimum disruption.

Twentieth, the brief says that every Federal agency already has the inherent authority to initiate or intervene in judicial review proceedings.

If the drafters of the brief really believe this, then why are these writers so exercised? If the CPA is limited to amicus powers, the Council of Consumer Advisers which is created in title I of this bill has, in their words—

The inherent authority—in the absence of statutory authority—to initiate or intervene in judicial review proceedings involving the actions of the Federal agencies.

If the writers really believe this, then why consider this bill? Let us merely ask Mrs. Knauer, FDA, FTC, and so forth, to start exercising their inherent authority to attack other agencies or each other.

This bill is a complicated one. There are many differences of opinion as to the best approach to the protection of the consumer's interest.

I question, in all candor, whether or not the bill as it now stands would be in the interest of the consumer. I question whether or not it will in fact do the reverse of the function for which it is designed—and that is to raise the cost for the purchasing requiring the necessities of life, for the people most in need of help, the low-income people of this country.

Too often, the Federal Government has, in its desire to be helpful, created more problems than it has solved. The difficulty that exists in this bill is that the interests of the consumer are not the interests of a special interest group, but the interests of all Americans. We are all consumers. To the extent that we are protected by the agency, good. To the extent that we protect the right of appeal, that is good. But to the extent that we create ever-increasing numbers of agencies of government and ever-increasing bureaucracies to impose on us as individuals, we jeopardize the basic freedoms of the people of this country.

Mr. President, in the Sunday Star, James J. Kilpatrick had a particularly penetrating analysis of the consumer

protection bill which he characterized as an unwise delegation of power.

Mr. Kilpatrick points out that in the great arena of public affairs, the name of the game is power—how it is won, how it is used, how it is restrained. This sound doctrine was voiced in the Virginia convention of 1788 by Patrick Henry: power always to be distributed sparingly, on the assumption that bad men will use it badly, for it is likely that they will.

Mr. Kilpatrick feels that this sound doctrine had been forgotten by the advocates of the Consumer Protection Organization Act. In their eagerness to restrain the exercise of power by business they are creating another machine of even greater power. They are creating a super-bureau above all other bureaus. Mr. Kilpatrick recognizes that there might be some value in creating some sort of consumer agency, as independent as the General Accounting Office, with a responsibility to complain, to exhort, or to dramatize on behalf of the best interests of consumers. But he warns against the creation of a czar with super powers over all other agencies and bureaus.

As I have stated before, I feel that a consumer agency should be created. However, I agree completely with James J. Kilpatrick and Patrick Henry that if our liberties are to be protected, then Federal power must be limited. Such limitations are contained in the amicus amendment offered by the distinguished Senator from Alabama (Mr. ALLEN).

I request unanimous consent that the Kilpatrick editorial be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Sunday Star, Sept. 24, 1972]

CONSUMER BILL: UNWISE DELEGATION OF POWER

(By James J. Kilpatrick)

Columnists and editorial writers, as members of our tribe are well aware, sometimes fall into a kind of lordly omniscience. With equal authority we pronounce upon public schools today and public power tomorrow. We are into everything that matters, but when it comes down at last to the question of power, the answer, of course, is: Non est. There is none.

The Congress this month is warming up to pass a bill that covers the same sweeping universe. The bill (S. 3970) would create a new Consumer Protection Agency, with authority to pronounce upon everything that matters. But there is this vital difference: The CPA would have power.

I have said it a hundred times and would say it a thousand more: In the great arena of public affairs, the name of the game is power—how it is won, how it is used, how power is restrained. The sound doctrine was voiced in the Virginia Convention of 1788 by one of Patrick Henry's anti-Federalist band: Power ought always to be distributed sparingly, on the assumption that bad men will use it badly, for it is likely that they will.

That sound doctrine has been forgotten by advocates of this Consumer Protection Organization Act. In their eagerness to restrain one exercise of power—the power of big business—they are creating another machine of even greater power. Their proposed Consumer Protection Agency is like nothing we have seen before. The CPA, potentially, is a government on top of a government, a super-bureau above all bureaus.

The wonder is that good men, experienced in the ways of bureaucracy, could be breathing legislative life into this Frankensteinian monster. An explanation lies in the nature of the problem.

In recent years, or so the Congress apprehends, consumerism has become a secular religion. Ralph Nader is its high priest, the women's clubs serve at the altar. Voters may otherwise be identified as Catholics or blacks or farmers or veterans, but whatever they may be, they also are consumers. The unwarranted assumption prevails that as such, they all are members of the same universal church. Politically speaking, consumerism has to be served.

Beyond politics is the problem itself, and the problem is real. In the day of the village blacksmith, standing beneath his chestnut tree, the consumer had an easier time: If the shoe didn't fit, he could lead the horse back. Responsibility was direct and a customer's recourse was immediate. Obviously, nothing of the sort obtains today. The TV set probably was made in Japan; responsibility is blurred; everything seems out of focus.

But a proper answer is not to be found in the drastic relief proposed by this bill. Consumers are not mere beads on a string. Their interests are not identical. It is absurd to suppose that the bureaucrats who would man the CPA would be one whit wiser, more skilled, or more efficient than the bureaucrats who now serve in, say, the Federal Trade Commission or the Food and Drug Administration. These new masters would simply have more power.

It will be denied, of course, but the proposed CPA is potentially the largest of all agencies. It would have to be expert in everything—in aeronautics, in oil and gas, in milk and tomatoes, in fabrics, drugs, safety belts, public parks, banks, bonds, boats. It would have power to intervene in every regulatory proceeding, formal or informal, of every existing agency. The bill invites chaos.

There might be some value in creating a kind of super-editorial writer, as independent as the General Accounting Office, with a responsibility to complain, to exhort, to dramatize, to publicize, and generally to make noise in what might be conceived to be the consumer's interest: an official Ralph Nader. But to vest such a critic with power—the power proposed in the pending bill—is to create a czar. No thoughtful consumer would buy it.

Mr. BROCK. Mr. President, let me say again that I think should be of concern to every Member of this body and to the American people at large. Time and again in recent years Congress has seen a problem and has tried to respond to it by the delegation of power—administrative, legislative, judicial power. In some instances we have delegated power that the Congress itself does not have under the Constitution. But whether or not Congress has it, Congress is the people's branch. Nobody in any agency is selected by the people or is responsible to them. Too often I think Congress has embarked upon a program of coercion, of force, and excessive exercise of power, all to the derogation of some basic and essential freedoms of all Americans.

It concerns me that in this particular Congress we debated a bill not too many months ago in which Congress was going to delegate the right to a fieldman of an agency, absolutely to shut down a business, lock, stock, and barrel, if he did not like the way they were hiring, firing, or promoting. The businessman had virtually no protection, and neither did the employees.

That particular section was stricken by an amendment of the Senator from Colorado. But every so often, in this body, we come up against this particular issue.

How much power is necessary to protect people, and how much power can be delegated to any executive, any administration, or any enforcer, without abrogating the essential rights and responsibilities of free men, without damaging or even placing in jeopardy the rights and responsibilities that we have under the Constitution?

I think this bill has a desirable objective. It has the advantage of great public support in terms of its goals. But I question whether the American people really want another agency which can compete with existing agencies. I feel my constituents in Tennessee would ask me, if I did not make an effort to improve the bill, "Why did you not make an effort to improve the existing agencies that have regulatory powers? If there is a problem with FDA, why not change the FDA regulatory powers? If there is a problem with FTC, why not change the regulatory powers of the FTC? Why create a condition whereby we are going to have the United States as a litigant over and over again in the Federal courts, which are already overburdened?"

Where does the citizen stand? To whom does he listen? Time after time, when we talk with young people, we find a sense of frustration because of a feeling of the institutionalization of life in this country. There is a feeling that things have gotten out of hand. People do not know where to turn for an honest answer.

What we are doing here is creating new problems as well as compounding old ones. Are we not creating a situation where, by law, an agency can go in and intervene with another agency in the legitimate function of exercising its supervisory and regulatory authority? Where does the citizen look for help in that kind of situation? Where does the small businessman get relief with that kind of proceeding?

Under the bill as written without the amicus amendment there is no place for the small businessman to go. He can go to the courts, of course, after the fact, after the damage is done, perhaps after he is out of business; and then perhaps he would have little opportunity to pursue the relief.

It seems to me that in our zeal to protect the rights of consumers, we must not forget to protect the most fundamental right of all, the right of men to their freedom.

Mr. GURNEY. Mr. President, will the Senator yield for a question?

Mr. BROCK. I am glad to yield.

Mr. GURNEY. First of all, I commend the Senator on his most thorough analysis of this bill, and on calling attention to the many dangers and pitfalls that lie in it. I think this is about the most thorough analysis I have heard of this very comprehensive bill, and it does point out what may happen if an extreme consumer partisan is appointed to administer this agency. I certainly think that we have to realize that the strongest partisan

who can be found for consumers would probably be put in charge of this agency.

I would like to ask the Senator this question: He pointed out that in his opinion, the amicus amendment would permit the CPA to fully and adequately represent consumer interests. I certainly agree with him on that point. I wonder if the amicus approach would not perhaps enable the administrator to better represent consumer interests.

I bring up this situation: Again and again we find conflicting consumer interests in areas of great interest around the country. For an example, let us take the power problem with which we are confronted. We have a power crisis in the United States today, as everyone knows. There are blackouts in some areas. Everyone in Government who has anything to do with the power situation is concerned with whether we are going to be able to construct enough powerplants to satisfy the needs of this country. These needs are now increasing at about 10 percent a year. In my own State of Florida the increase is even more rapid than that, because we are a much faster growing State than much of the rest of the country.

But we have conflicting interests here. Suppose, for example, that a powerplant is to be built in a certain area—there is one now under consideration for the city of Philadelphia. My understanding is that the Atomic Energy Commission selected a site there, and the citizens who live near that site brought a court suit, saying they did not want it there, even though they were going to be consumers and would ultimately benefit from the power output of the plant, whenever it is built.

We have, of course, the whole environmental ecology problem. When a powerplant site is selected, the ecologists, all fair minded as far as their interests are concerned, usually raise the question of damage to the ecology.

For example, again in Florida, our newest atomic powerplant has been held up in its final construction and initial operation for years, because of an ecology controversy.

We have a conflict of interest with ecologists, we have a conflict of interest with citizens who may live in an area where an atomic plant is planned, and we have the very heavy consumer interest of those people who want the power to use in their homes, their businesses, their hospitals, and for all the many other uses for which power can be utilized.

It seems to me that under this bill, as it is presently drawn, the CPA can represent one of those interests, but cannot represent the other interests. Would the Senator from Tennessee care to comment on that? Is that true under this bill?

Mr. BROCK. The Senator is absolutely right. As a matter of fact, to take the analogy or the illustration one step further, let us assume that the Environmental Protection Agency finds that adequate adherence has not been given in the issuance of the impact statement in the building of the powerplant. The Consumer Protection Agency could agree, or could also disagree, and inter-

vene on behalf of the proponents of the powerplant and say, "We are going to build it whether you like it or not," with the full force and power of the Federal Government behind it in the form of this consumer agency, which would have far greater powers than any other agency, including the Environmental Protection Agency.

So, with this bill, without the amendment, there is no way to prejudge or predict where they are going to define the consumer interest. Will they define it in the area of protecting the environment? Will they define it to mean power at a lower rate, or will they define it, on the contrary, to mean power at a higher rate? They could, for example, intervene with the rate fixing agencies and say, "We think your rate is inadequate to provide for proper research and development." There is no limit. They define what they mean by the consumer interest, and there is virtually no limit on that authority to do a self-definition job.

Mr. GURNEY. As I understand the Senator's example, if the power company went to the CPA and said, "We want you to intervene on our behalf," and the CPA looked at it and said, "Well, they do have a proper case there, so I'll intervene on their behalf," and if they did so, and if a week later the ecologists come in to the CPA and said, "No. We want you to intervene on our behalf," my understanding is that, since the CPA has already intervened on behalf of the power company, they cannot intervene in behalf of the ecologists. Is that correct?

Mr. BROCK. Of course.

Mr. GURNEY. Under the amicus approach, as I understood it, when the amendment was offered in the committee, the CPA would intervene in such a situation and give all the arguments on behalf of a consumer. There is no reason in a case such as that why he could not give the views of the power company, the manufacturer of the electricity, the ecologists, or even the people who ultimately are most concerned, those who want to use the electricity. All these people who do have conflicting interests could have their viewpoints presented by the CPA under the amicus amendment.

Is that the Senator's understanding of the amendment?

Mr. BROCK. Absolutely.

Let me make two points in response to the Senator's questions, which are excellent.

First, I should like to read one paragraph from a letter from the Chairman of the Federal Power Commission with respect to the effect on the consumers of this legislation as written:

The authority which this bill would confer upon the Consumer Protection Agency, if improvidently exercised, could substantially hamper effective regulation by this Commission under both the Federal Power and Natural Gas Acts by postponing finality of decision in matters of pressing public concern. The power to seek judicial review even on the absence of such intervention or participation could impose another layer of regulation upon this Commission and impair its effectiveness to the detriment of the public.

That is signed by John N. Nassikas, Chairman of the Federal Power Commission.

I point out that what we are trying to do with the amicus amendment is to create a different kind of intervention, a higher quality, what we would refer to as the last-word approach. I believe it provides a more effective means of advocacy be done by any parties to the adjudication proceeding.

As the Senator points out, under the amicus approach, all points of view that responsively relate to the consumer interest must be taken into account, not just one. Those interests are not always the same. Quite often they are not.

It could be in the interest of more power to prevent blackouts, as opposed to the interests of higher prices or in the interests of ecology or in the interests of the environment. They are conflicting, and they all should be considered.

We simply cannot take a one-stance approach to the decisions of Government.

This approach of the amicus amendment would also avoid the specter of the Government presenting two prosecutors with potentially two different views, or the Government being cross-examined and impeached, in fact.

The compromise we are offering provides, as a matter of unchallengeable right, the CPA with a reconsideration of an action where any person could seek such action. From an administrative point of view, this is far more effective and far less disruptive than the present bill, which does not indicate this power.

Granting the CPA the right to seek judicial review of Federal actions will result in the "United States against United States" court cases. This is not administration of the law but a division of the Government that must be resolved by the courts. If it can be avoided, it should be.

In the extremely rare instances where this has happened, the courts have usually been divided and have expressed not only their confusion but also their annoyance over the fact that the executive branch could not administer the law.

I think that is exactly the kind of problem we are creating here, with the bill as it is presently written, without the thrust and effect of the amicus amendment.

What we, in contrast, are trying to do with the amicus amendment is to offer every right of intervention, every right of representation to consumers' interests, but broadly stated; not selected consumers—all consumers. In other words, the agency would be mandated to represent not a group who happened to have political power at a given point in time, but every citizen of this country, in the broadest possible way, in their total, long-term national interest, as consumers. That, to me, is a far more effective type of representation than that which is proposed in the bill.

Mr. GURNEY. I would agree with the distinguished Senator from Tennessee. That was my understanding of what the goal of the proponents and authors of the proposed legislation was originally. But it seems to me that the final product is entirely different.

Is it the understanding of the Senator from Tennessee, as it is mine, that the creation of the CPA—including the crea-

tion of powers given to it in the proposed legislation—not only authorizes it to represent whatever special consumer interest presents a complaint or a cause or a request for action, but mandates that such representation shall be of an advocacy nature.

My profession was that of a lawyer before I came to Congress. As I understand the word "advocate," an advocate, a lawyer on behalf of a client, is supposed to do everything within his power to make sure that his client's will prevails, using all his wisdom, all the tools at his command, in an effort to try to win for his side, his client, his cause.

Therefore, it seems to me that the Senator is absolutely correct, that in the creation of this super agency, as he has described it—and I think that is an excellent word to use—we are indeed creating a creature of Congress whose mission as spelled out, is to go out and harass Government agencies that are involved with consumers' interests, on the part of whatever consumer presents a cause to the CPA.

Is this the Senator's understanding?

Mr. BROCK. Absolutely.

There is one thing many people fail to realize about this bill. One of the things we do in Congress is to put a good label on every bill. Everybody says, "I'm for a consumer bill," and, of course, they are. We all are. Or they say, "I'm for a health bill or an education bill." Then we cover up some rather specific language in the bill with that label.

We talk about our interest in the consumer. The fact is that this bill, as it is written, really has no impediment to becoming a big business bill.

If this agency wanted to, there is no reason in the world why it could not intervene totally on behalf of industry, in an effort to raise prices on natural gas or oil or other regulated commodities, because the logic of the case—and it is a case that can be made—on the part of industry is that "If we do not get higher prices, we won't have a profit for exploration. We have a fuel crisis. We have to develop more resources. We have to find those resources. In the interests of consumers we have to have consumers temporarily pay a higher price for electricity, gas, heating oil, and the like."

There is no reason in the world why they could not submit a statement to the CPA, as it is proposed, and say, "We are concerned about consumers. We are trying to help consumers over the long term. Now we expect you to go to court and fight the State commissions which are impeding our growth and progress and our ability to develop energy resources by setting unrealistically low prices." There is no reason why the agency cannot do exactly that because that is what they have been created to do, to represent the interest of the consumer. It may be a vested interest or a special interest, or a group of business interests, but there is no preclusion of that kind of activity whatsoever. There is no reason to think that could not happen. It might, in the long term, but my constituents in Tennessee do not think so and they resent it very much.

Mr. GURNEY. The Senator men-

tioned his constituents in Tennessee. That raises this point, which has puzzled me about the bill. It seemed to me that we in the United States often go off on this crusade or that crusade, when perhaps a crusade is not warranted at all.

I am reminded of a few years ago, when in many parts of this country, everyone began digging holes in the ground for bomb shelters. I had friends who came back from a trip to Europe at that time, when everyone in this country was busy digging holes in the ground like a woodchuck. They said to me, "What has happened? We spent 3 months in Europe and everyone over there is going about their business. No one is concerned about war or an atomic attack from the Russians. What in the world is the United States doing digging holes in the ground for bomb shelters?"

Well, as we all know, after a year or so of that curious activity, everyone forgot about bomb shelters and used the holes in the ground for a separate bedroom or a separate living room.

I wonder, perhaps, whether we are not going off on that same sort of tangent on this consumer bill.

With that as a preface, I should like to ask the distinguished Senator from Tennessee if he has had much mail from back home requesting him to introduce a consumer protection bill and asking him to vote for such a bill, with correspondents verbally wringing their hands that something must be done to protect them from the plans and schemes of business to do them in with bad products? Has he had that sort of request from home?

Mr. BROCK. If I may respond to the Senator from Florida, let me say that I have had virtually no mail at all advocating this kind of legislation. I have had a flood of mail in opposition to it from small businessmen and attorneys who are terrified at the implications inherent in this possible exercise and grant of authority. They fear very much that there are no safeguards, no protections built in for the small person in this country, be he a worker or a small businessman. That is the case.

I was interested in the Senator's remarks about crusades. I was reading, just over the past few days, a historical study of the first crusade, back in 1095. I was reading a double account of it. One account concerned the people who were the inhabitants of the area around Jerusalem and their viewpoint of what ultimately became a holy war. Every time they killed a number of crusaders, they felt that they had gotten themselves closer to their kind of heaven and had sent so many more souls; that is, crusaders, to hell.

When I read the account of the crusaders, obviously, they had a somewhat different perspective. They went into this particular community, talked at some length about how the infidels had destroyed women and children, ruthlessly raped, mutilated, maimed, kidnaped, and killed these holy Christian women. So when they took a little town and in that particular exercise, they had proceeded to overwhelm the garrison, they proceeded to mutilate, maim, and mur-

der somewhere on the order of 1,100 or 1,200 infidels, whom the crusaders felt they had sent speedily on their way to their predestined place in Hades and had, of course, gained for themselves one further step up the ladder into heaven. That is what happened in the crusades of those times. We forget that there may be two points of view.

That is perhaps true on this particular legislation. In the interest of the consumer, we might unwittingly push the price of goods and services beyond the reach of the small consumer, the impoverished family, those who live on \$3,000, \$4,000, or \$5,000 a year. We can end up creating a government of chaos, a government of conflict. We can create a great force, a great influence to regulate, because we can take to court any agency anytime someone disagrees. The FTC can have its regulations, which a chairman can sign into law, and all of a sudden we have a climate and a condition in which prices go up, stretching the basic prices of commodities beyond the reach of low- and middle-income families, and yet there is no effective regulation because we are all tied up in the United States against the United States cases in the courts.

I cannot imagine anything more deleterious to the consumer than that, with such a condition and climate in this country. No matter what a bill is labeled or what the intent is, if the effect is to damage the rights and prerogatives of freedom, we have created a problem, a monster.

Mr. GURNEY. I have to agree with the distinguished Senator from Tennessee in his analogy of the Crusades causing so much mischief. It is an excellent example. It had been my impression of the Crusades from a study of history back in high school and in my early years of college that these were, indeed, tremendous movements on behalf of Christianity and did the world a very considerable amount of good. But then, this year, I read James Michener's story about the Crusades—perhaps the Senator did, too. I understand that Mr. Michener is one of the most accurate historical novelists that we have today, and his assessment of the Crusades is quite a bit different from what I gathered from my history books back many years ago. It fits precisely into the reasoning the Senator from Tennessee has mentioned today.

Mr. BROCK. He is one of the great authors of our time. It is rather intriguing, in reading this particular material that I had in analyzing the Crusades, that they did not call them Crusades until after the first one. It was a different thing then. It did not become a holy war until after. The fact is, the church in those days did not believe in violence. It was steeped in early Christian religion which said, "Thou shalt not kill." And it adhered to that principle until this particular time, in the late eleventh century. But a funny thing happened. When they had to collect all the men together to go out on the first Crusade, they had to create a system of management to leave behind some method of maintaining the farms so that they

would continue their productivity, and they had to create a new type of commerce in order to operate the weapons of war and to finance the war, and there had to be new monetary and credit systems evolved which would afford them the opportunity to engage in a crusade, in order to capitalize on their endeavors. All of this created such a tremendous economic climate that it became sort of nice. It was a pretty productive thing for everyone. So it became a holy war, and then it became a crusade, which may or may not describe the essence of human nature at that particular time.

But it illustrates a problem we have today. We may be working in the reserve condition here. We may have a crusade to protect the interests of the consumer, which will ultimately destroy his interests and will destroy his opportunity to engage in the marketplace in the production of the necessities of life.

Mr. GURNEY. The Senator's point is well made. In the article which I mentioned earlier today, which was the Sunday Star and Daily News, published on August 13 is an article about consumerism by Jefferson St. John, a news commentator for radio and television, and also a writer.

He points out that during the New Deal days we actually had devices similar to the CPA, which we are creating in the pending bill. It was a Consumers' Advisory Board.

Gen. Hugh Johnson, who was in charge of the NRA, was a very important man under President Franklin Delano Roosevelt. He admitted in his memoirs that "I made a blunder in setting up a Consumer Advisory Board as I did."

General Johnson also conceded that the board was a factor in "increased prices to consumers"—in addition to FDR's monetary policy, price fixing in agriculture, and State and Federal taxing policies.

"The board representing consumers," Johnson added, "should not have been set up exclusively in NRA where it felt a duty to 'Make a record' and attack every code on general principles without regard to other influences affecting prices." That is analogous to the point the Senator was making.

The Senator stated that the Crusade accomplished a great deal of mischief, probably the greatest cruelty and killing and maiming in the history of the world, all in the name of Christianity.

It seems that a similar distortion occurred under the guise of consumer protection. We may be accomplishing the reverse of what we are attempting to do. We may protect them so that the goods and services would cost them a good deal more than if we had done nothing.

I am of the same view as the Senator. I am not opposed to creating the CPA as such. The CPA can engage in consumer protection. As a matter of fact, we have protected those interests through such agencies as the Food and Drug Administration, the National Trade Commission, and other departments and agencies of the Government. I think there are 39 of them involved in consumer protection.

This Senator—and I know full well the Senator from Tennessee shares my

views—feels that he is not opposed to protecting the consumers. However, we are opposed to going overboard on protectionism by setting up a CPA Administrator and giving him the power to actually hamstring the process of Government and the process of trade.

As I say, we have amended it 58 times in order to try to improve it during the mark-up in the full committee. That was because it was such a bad bill. However, there is still much in it that should be changed in order for us to accomplish the mission we set out to do, to protect the consumers.

It seems to me that the amicus approach is the desirable approach. I think after we make a start on it, we will find that it will work, because it will indeed bring all viewpoints of the various consumers together. We do have these conflicting viewpoints of the various consumers. Even if it would not accomplish all of the missions we think it will, it seems to me that it would be far better first to take a step toward this new approach of a super agency, rather than to suddenly compete in the final race of the Olympic games without any prior preparation.

As I see the Senator's viewpoint, which reflects mine, we ought to give it a chance through the amicus approach before we set up this advocate agency that will go charging out among the various Government agencies trying to make a record. As Gen. Hugh Johnson said, a Consumer Advisory Board usually generated more problems than it solved.

Neither the Senator from Tennessee nor I see any compelling urge from our respective States. However, it seems to me that the proponents of this bill are trying to sell the idea that consumers all over the United States are clamoring for this bill, clamoring for some kind of protection to protect them from the evils of the manufacturers, the producers, and business interests in the country.

Mr. President, I was rather amazed here to receive some letters recently. I wish I had received these letters earlier, but I think people are just waking up to what is in the bill. Here are some people who are waking up to it. I know that the Senator from Tennessee would be interested in these letters, because he has farming interests in his State, as I do in mine.

I have a letter from the American Farm Bureau Federation. They represent 2 million members. That is a lot of consumers in this country. Believe me, farmers are very price conscious. They have been for some time at the low end of the totem pole so far as the increase in profits and a share of the increase in the economy in this country is concerned.

I will read portions of the letter. It reads in part as follows:

We submit that the delegations of power granted to CPA to intervene in agriculture alone are extraordinarily far reaching and comprehensive. The activities of many other agencies, such as those of the Department of Labor, Food and Drug Administration, Interstate Commerce Commission, Department of Transportation and many other agencies also would be of direct consequence to farmers.

The enactment of the bill in its present

form inevitably would entail administrative delays at every step of affected procedures. The costs of attorney fees and other costs in and out of government would be substantial. Government agencies would be ensnared in new "red tape" and procedural complications.

This letter goes on and makes other arguments.

This is an organization representing 2 million members. They would like us to do something about correcting some of the inequities in the bill.

Here is a letter from the National Grange. We do not have many Grange people in Florida. However, where I grew up, in Maine, we had many of them. Perhaps the Senator from Tennessee has many of them in his State. At any rate, the Grange people sent a letter to me about this bill.

It reads in part:

The National Grange for many years past has supported consumer protection legislation and in particular in the last several years proposals to create within the federal governmental structure an agency whose sole purpose is to protect the interest of the consumer whenever it may be affected by federal government action or inaction.

The opening paragraph of the letter states that this organization is consumer minded and they actually support the concept of the bill. However, in the next paragraph they go on to say:

We are firmly convinced, however, that S. 3970 goes too far and that it would disrupt the orderly process of administration of federal laws, result in damaging delays in necessary government regulation and on balance harm rather than help consumer interests.

They continue:

Taking into consideration past activity of consumer activist groups in the Nation and the current climate of challenge of almost every Government action, we fear that CPA would use its powers to the utmost and create havoc in established Federal procedures, including rule-making, rate-making, licensing and adjudication proceedings, and informal actions of various agencies. Delay and additional cost to the Government and interested parties would be considerable.

I would ask the Senator this question. They are correct, are they not, that the CPA can go into rulemaking, ratemaking, licensing, and adjudication proceedings, and even informal actions of various agencies.

Mr. BROCK. Without any question whatsoever, the Senator is correct.

Mr. GURNEY. Mr. President, I would say that there are 600,000 members of the National Grange throughout the country, and they do not want the bill. They say so in no uncertain terms in this letter.

Here is another letter entitled "Action Bulletin."

I was particularly interested to get this letter. It is not addressed to me. It is addressed to members of the National Council of Farmers Cooperatives. We have a great many cooperatives in Florida, and I am sure that the State of Tennessee does, too.

Cooperatives are particularly common in our great citrus industry. I suspect most of the fertilizing and marketing of the whole Florida industry is done through cooperatives who are members of this council. Here is what they say.

This is an action bulletin or quotation from the national office:

In the legislative rush of the waning weeks of the 92nd Congress, a seriously anti-agriculture Bill threatens to become law. This Bill is S-1177, designed to create an independent Consumer Protection Agency at the Federal level.

Farmer cooperatives generally support legislation of benefit to consumers. However, this Bill would cause havoc with the effective operation of the USDA and its varied agricultural programs. A similar Bill has already passed the House (H.R. 10835), and the Senate Bill's passage is fast moving toward reality. It must be amended to protect agriculture's interests.

There are 6,500 cooperatives throughout the United States that belong to this council. My information is that this represents about 3 million local farmers, scattered throughout the Nation. Thus, we have letters from nearly 6 million people who are all consumers in this country, very active and important consumers, and they apparently think very little of this bill in its present form.

I wish to ask the Senator from Tennessee if it is his feeling, too, that the farmers in the great State of Tennessee, if they know about this legislation, are apt to view it with considerable alarm.

Mr. BROCK. I would say that that is the understatement of the year. I am delighted that the Senator from Florida brought this matter up. One of the more interesting letters I have is a copy of the letter from Richard Lyng, who is Assistant Secretary of Agriculture, to the Senator from Alabama. I would not dream of taking the time of the Senator or this body to read the 31 pages of activities that are listed by the Department of Agriculture which could be adversely affected by the passage of this legislation. It covers every single farm program we have on the books. There are 31 typed pages listing those areas which can be covered and adversely so in the interest of the farmers under this bill. That is the kind of joint franchise that has been suggested we grant this new agency. It is an incredible franchise and frankly the farmers in my State, those who have become familiar with this legislation, without exception express grave and serious concern over some changes.

The thing that bothers me most, and it was alluded to in the excellent minority views submitted by the Senator from Alabama, attached to the committee report, is that I am not sure whether Congress should not start all over on this bill. It is difficult to amend because we are creating amendments which may or may not consider all the ramifications. We adopted some 58 amendments in committee, if I remember correctly. That suggests the kind of bill we were handed in the first place. There were the standard problems incorporated in that original legislation.

I personally support the amendment of the Senator from Alabama because I think it is a step in the right direction. But I really question whether or not that amendment is in itself sufficient to remedy the inequities of this particular legislation. Perhaps it would help if I remind this body of a letter to the then chairman of the Committee on Government Operations, the Senator from Arkansas (Mr.

McClellan), from Ralph Erickson, Deputy Attorney General, which was received on July 28, 1972. I wish to read just a few relevant paragraphs:

In the Department's view, the proposed Agency's powers of advocacy and intervention in Federal administrative agencies' decision-making are too broad, and pose a threat that the orderly and effective dispatch of the public business in the public interest might be significantly disrupted. For this reason, the Department strongly prefers the more narrowly drawn provisions governing the proposed Agency's interventionary powers which contained in H.R. 10835 as it passed the House of Representatives last year. A comparison of provisions of the Committee Print and H.R. 10835 in this important area may help illuminate some of our concerns.

It goes on to define agency action in section 401(4) and states that it fails to set any reasonable limits on areas of possible intervention by the Administrator:

"Agency activity" means any agency process, or any phase thereof, conducted pursuant to any authority or responsibility under law, whether such process is formal or informal, but does not mean any particular event within such process [.]

I go back to the quotation of the Attorney General:

In our view, this definition is at best imprecise, and implementation of Section 203 (b)'s mandate under it would cause great problems for administrative agencies in general, and particularly for the Department of Justice in performing its prosecutorial functions.

The letter goes on to say:

The Department is also opposed to the broad reach of Section 204(a) of the bill, which gives the Administrator "standing to obtain . . . judicial review of any Federal agency action reviewable under law and to intervene as of right as a party in any civil proceeding in a court of the United States involving the review or enforcement of a Federal agency action, if he intervened or participated in the Federal agency proceeding out of which the action arose or, if he did not so intervene or participate, the court finds that the result of such action may substantially affect the interests of consumers."

It goes on to state:

In contrast to the unfettered grant of authority to the Administrator to obtain judicial review and to intervene as a party in a court proceeding involving the review or enforcement of a Federal agency action, we note that there is no provision in the Committee Print comparable to H.R. 10835's Section 204(c)(2), which allows the Administrator to appear as *amicus curiae* in other actions to which the United States or any Federal agency is a party. We believe that the Administrator's authority (or lack of it) to participate in judicial proceedings not involving the review or enforcement of Federal agency action should be specifically set forth.

He goes on to state:

The Committee Print's grant of compulsory information gathering powers to the Administrator also seems excessively broad. Both the Committee Print and H.R. 10835 authorize the Administrator to use in any Federal agency proceeding to which the proposed Agency is a party all types of compulsory process and discovery devices available to any party to the proceeding under the terms of the statute governing the agency conducting the proceeding.

Again, he states:

For similar reasons, the Department would recommend the deletion of Section 207(b) of the Committee Print in its entirety. In essence, Section 207(b) would give the Administrator the right to compel any person who is engaged in a trade, business or industry affecting commerce and whose activities substantially affect what the Administrator determines to be the interests of consumers to answer interrogatories under oath "concerning such activities and other related information." The Department regards this proposal as unsound and unnecessary. The proposal is unsound, because it is at odds with the basic premise of the legislation, which, as we understand it, is that the interests of consumers need more adequate representation in the processes of Federal administrative agency decision-making. To our knowledge, the proposed Agency has never been intended to be a wide-ranging investigative agency, empowered to scrutinize the business practices of any person or business entity whose activities might affect the interests of consumers.

He goes on and on. There is no limit to the grant of discretionary power, *carte blanche*, without any protection on the individual. It seems to me we run the terrible risk of jeopardizing of the interests of small business and the consumer, as well.

Mr. GURNEY. Mr. President, will the Senator yield for a unanimous-consent request at this time?

Mr. BROCK. I yield.

Mr. GURNEY. Mr. President, on behalf of the Senator from New Hampshire (Mr. Corron), I ask unanimous consent that Mr. Arthur Pankopft, of the minority staff of the Commerce Committee, be granted the privilege of the floor during the consideration of the consumer protection bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The GURNEY. The Senator from Tennessee mentioned the Justice Department, and, of course, that brings to mind lawyers and the law profession. I understand this bill starts out with an authorization of \$15 million the first year, and then \$20 million the second year, and then \$25 million the third year. Is it the Senator's understanding that a goodly amount of authorized, and then, of course, later appropriated, money will be devoted to the hiring of lawyers to staff the CPA?

Mr. BROCK. Of course. I am sure the money would go for that purpose.

Mr. GURNEY. My calculation of a rundown of lawyers' salaries indicates that perhaps \$20,000 a year would be paid for the employment of literally hundreds of lawyers under the authorization and appropriations which this bill will eventually set up and generate from the Appropriations Committee. It would also be my feeling that once the lawyers get on board, their main mission in carrying out the edicts of this law will be to intervene in the informal proceedings, and later the formal proceedings, of the agencies, and then later the court proceedings either *AB initio* or else on appeal from what happened before.

Is it not the Senator's understanding that the hundreds of lawyers who would be employed would be doing that?

Mr. BROCK. Yes. Perhaps I have a certain bias on this, and I make no derogation of the contribution of lawyers to the legislation enacted by Congress, who, I think, comprise perhaps two-thirds of the membership of both bodies. However, as I said, if we get a lawyer's employment act through Congress such as this, there are going to be quite a few who are going to be well compensated for their contributions, and perhaps they may have something at heart other than the interests of those for whom we purport to act.

Mr. GURNEY. I would have to agree with the Senator that the bill is certainly going to be cheered from one end of the land to the other by lawyers, because it does constitute a splendid employment act for lawyers.

Mr. BROCK. We are doing as much for them in this one as we did for the tax attorneys in the 1969 tax code provisions.

Mr. GURNEY. I think the Senator has a point there.

The thing that disturbs me, however, is that I wonder if we are not setting up, at least in this Senator's opinion, based on experience gained from action in Florida, something akin to the legal department of the OEO. We have had a lot of experience with the OEO in the State of Florida. I think it is a fair thing to say that our experience has been that while the OEO lawyers acted in good faith, there is no question that they did stir up unnecessary litigation in Florida, went out looking for it, went out looking for clients, trying to get law business, in order to carry out their mission.

I can see that this same thing is going to happen with this kind of agency, where we have one, two, three or 400 lawyers—and I would think the CPA eventually could have as many as that. I think some of them are going to come into that agency in a crusading form or fashion, using the same words we used before, and I think they are going to find ways and means of carrying out their mission of advocating as hard and as fast and as much as they can in the name of the consumers.

Mr. BROCK. That is correct.

After these 500 or 1,000 or 2,000 attorneys, or whatever number it will be—and it will be the maximum number possible—can the Senator imagine what would be the case, if, after they had gone through an investigation of the FTC and the FDA, and the ICC, and all the other agencies, and did not find any problems? They would then come to us and say, "Well, you need to continue hiring us, because we need to exercise oversight over them, but, as a matter of fact, these agencies are doing a pretty good job?"

To think they would do that is living in a dream world. As a matter of fact, for them to justify their existence, as every bureaucrat must, they have got to come in with a very controversial report. They have to say, "The agencies are doing an abominable job, and all you have to do is give us more power and more money and perhaps more men to straighten them out." That is how the bureaucracy grows. That is the nature of the beast. Not once will you have an

agency come in here and say, "We will solve the problem if you will straighten out FDA or FTC and let them be regarded as a consumer advocate"—which is the thing we should have done in the first place.

If we do not agree with agency decisions, then we should examine into that agency. If we are going to create a new agency here, why not start abolishing other agencies? But that is not proposed. All that is proposed is to put one more patch on the quilt, and back it with a lot of power that has never been granted to any other agency in the history of the country. We are going to do that, and we are going to give them, by definition, the motivation to seize upon the most controversial questions they can in order to justify their existence. I think that is one of the poorest ways to go about solving the problems of this country, and it is a rather dangerous way.

Mr. GURNEY. I am going to have to agree with the Senator.

I would like to pursue the lawyer role a little more, since I brought it up. It does bother me. As I pointed out earlier, I am a lawyer myself, and I understand how an advocate, when he has a case, wants to win. That is why I think the amicus approach is so much better than the approach in the bill. With the amicus approach, the CPA comes in and is able to present all the views it wants to present on behalf of the consumers—and there could be as many conflicting consumer interests, of course, as two or three or four. But after it had presented its views, either in an informal procedure or a formal procedure, or even in a court action, that would be the end of its participation under the amicus amendment. As I see it, it would be able to expose all the issues that it needed to expose as far as the consumer was concerned.

Mr. BROCK. The Senator is entirely correct. I appreciate his contribution and his thoughts in this matter. I think he is one of the most skilled members of the committee, and he has done as much research on this legislation, insofar as its effect on the consumer and the interest of the consumer are concerned, as anyone, and I commend him for that work.

Mr. President, I yield the floor.

Mr. GURNEY. Mr. President, continuing the point that was under discussion with the distinguished Senator from Tennessee, it seems to me this amicus approach would be far better, because at the presenting of the views of the consumer—in some cases the many conflicting views—proceedings would terminate, and a decision could be reached. I can see all kinds of reasons, if the Administrator of the Consumer Protection Agency is given the power that is presently in the bill to intervene as an advocate, why he would be completely motivated to delay and appeal, and why great mischief could be done. Such delay might even be used as an implied threat, even as it has by other agencies.

Suppose, for example, we had some agricultural matter under consideration

involving fresh products of some sort—tomatoes, perhaps, or some other perishable items.

Decisions on these matters are needed very quickly, because, if they are not made quickly, the perishable product perishes and is no longer of any value to the producer or the consumer.

Under this bill, if we give the Consumer Protection Agency the full rights of advocacy, it can intervene, it can delay the proceeding, and then, of course, great harm, great mischief, and great damage will be done as far as perishable products are concerned.

The same thing, of course, could be true in many other areas. I use again the example of the power crisis which we have in our country. This is a crisis that no one can overexaggerate. It goes to the very heart of the ability of the citizens of our Nation to function, using the power that is consumed in the home and using the power that is consumed in industry. This country is a power-oriented country, and we could hardly survive for a single day without the full benefit of many forms of power. We are now in a mammoth power crisis all over the country. All of our experts in this field are having meetings and holding hearings, trying to come up with decisions on how to overcome this great power crisis.

The only way it can be overcome, of course, is to proceed with the construction of powerplants, whether they be atomic plants, coal-powered plants, oil-powered plants, or plants utilizing any of the other kinds of fuels that are presently used in the production of power.

But, we have serious delays in powerplant construction. Many of these are due to lawsuits filed against power companies trying to build atomic powerplants. These lawsuits are on behalf of particular interests—some consumer interests and some just people who do not want the powerplants in their neighborhoods.

Suppose we were to enact the bill we have before us. I do not think there is any question but that the particular area of power production will be one of the first in which the CPA will be requested to intervene on behalf of the consumers. I anticipate that requests will be made of the CPA by every type of consumer, by the power companies, by the ecological interests, by the conservationists, and by the direct consumers themselves, every one with interests conflicting. Certainly I can foresee no other issue where the CPA would be compelled to intervene more quickly than in this kind of an issue.

The administrator may intervene in informal proceedings or, perhaps later, in a formal proceeding before the Federal Power Commission, the Atomic Energy Commission, or some other agency that may be involved with this particular issue.

The CPA will go in, for example, to the formal proceeding, and make its case on behalf of whomever requests its services. Let us say it is the ecological interests. The CPA will have to advocate that the powerplant not be built, because it will be injurious to ecological interests. The

ecologists may have a perfectly viable case.

After the formal proceeding, should it go against the ecologists and in favor of, for example, the Atomic Energy Commission, the Consumer Protection Agency would be under a duty, in its role of advocate, to appeal from such a decision on the agency level.

Appeals take a long time. I do not know where this particular appeal would go. I suppose it would go to the Federal district court first, and then to the circuit court of appeals. It might even go as far as the Supreme Court of the United States.

If it follows that route, which it well could, it may be that years will intervene between the time when the CPA intervenes in the proceeding, and the time when final adjudication is made by the court of final jurisdiction. In the meantime, the powerplant in question will be held up, and one of the effects undoubtedly will be a severe shortage of power.

These are things that can happen if we follow the route that is spelled out in the bill. That is not to say, and none of us who are pointing out the pitfalls in this bill are trying to say, that consumers should not be protected. We agree that they should. But our feeling is that we ought to take the first step along the amicus route, to permit the CPA to present the views of the consumer at various levels of consumer interests, and present those views fully, so that whoever is hearing the particular matter, be it the agency or be it the Federal court, will be fully informed of the consumer interests.

It seems to me it is far wiser to proceed in that fashion, because the one thing of which we are absolutely sure in this very complex subject of consumer interests, is that there are indeed many varying kinds of interests, some of which are completely opposed to each other. Agencies and courts have got to find for one interest or the other, in some sort of a compromise, perhaps, but they cannot find all for one and all for the other.

That certainly is true in all of the consumer safety problems, and we have many of them today. Of course we should continue to proceed diligently in the area of consumer safety, and we are so doing. We passed the consumer product safety bill that has been alluded to by various speakers here not too long ago. But every time you talk about consumer safety, you necessarily have to go on to discuss the expense involved in consumer safety, because it always is involved.

I do not know how many car owners I have heard express to me the fact that they wished the car manufacturers would not add this device or that device under the guise of safety, because they do not want to pay the additional cost that device involves.

I think an excellent example of this is the shoulder safety strap. Every car manufactured in America has the shoulder safety straps now. That legislation went into effect some 3 years ago. There is no question but that it is an excellent device. There is no question that it protects the lives of passengers, and not only

their lives, but of course their safety from injury.

Yet as we drive home tonight, when we close up shop here in the U.S. Senate, I will wager you can watch 10,000 cars pass on any particular road out of Washington, and you will not find a baker's dozen of the drivers of those cars using the shoulder strap. They do not want to be bothered. Yet the cost of that shoulder strap goes to the consumer, at very considerable expense. I am not arguing whether or not we should have passed legislation requiring the strap to be there. I am simply saying that whenever we make a requirement like that, we are increasing cost.

Senators could send out a questionnaire to people who own cars, asking "Would you rather have the shoulder strap or the money it cost to put it on, whatever that may be," and I am sure Senators would receive the overwhelming response the money is preferred to the shoulder strap.

So we do have a number of conflicting interests here; and where we have conflicting interests that must be weighed, it seems to me that the correct way of going about that is through an amicus approach rather than by requiring the consumer advocate to advocate the position of whatever consumer may come before him at any particular time.

Mr. BROCK. Mr. President, will the Senator yield?

Mr. GURNEY. I yield to the Senator from Tennessee.

Mr. BROCK. Is it the Senator's interpretation of the bill as currently written that in the interests of automobile safety, for example, there are certain powers granted to agencies of the Government to insist on certain safety devices in automobiles? The Senator is familiar with that?

Mr. GURNEY. Yes, that is true.

Mr. BROCK. Now, if this agency felt those devices were improper or inadequate, then it could intervene and require the agency to more vigorously apply standards. Is that not so?

Mr. GURNEY. That is indeed so. The Consumer Protection Agency, as I see it, is set up to do exactly that, if the request is made to it to intervene in that particular subject.

Mr. BROCK. That is correct. I do not know if the Senator has ever seen figures of what it would cost to build a totally safe automobile.

Mr. GURNEY. No.

Mr. BROCK. I have seen figures ranging from an absolute low, for the cheapest type of four-wheel transportation with a motor, of \$15,000 to as much as perhaps \$75,000 per car.

The Consumer Protection Agency could decide that consumer protection does not relate to cost, but relates to safety only. It could then insist on every possible safety device being incorporated, to the extent that nobody could buy a car. I think that is somewhat stretching the definition of consumer protection, but I think that is possible under this bill.

Mr. GURNEY. I would answer the Senator by saying that it certainly is pos-

sible under the bill, as I understand the bill. When we were discussing it in the many markup sessions, that is exactly what we decided the Consumer Protection Agency could do, if it were requested by a consumer to look into that particular product safety question. That is what it is being created for.

As a matter of fact, as I see it, as long as a viable issue has been raised, concerning something that truly ought to be looked into, he would have a duty under this bill to do exactly that.

Mr. BROCK. Just to pursue the point, one of the more interesting stories I have seen came out of the State of California which has had for a very long time the most stringent antipollution requirements on automobiles in that State, they have eliminated, by and large, the more dangerous and noxious sulfuric dioxide emission from cars. If I recall correctly, all of a sudden they now find that the pollution being created in the Los Angeles basin is coming from nitrous oxides, which were not covered under the process of pollution control.

That is the sort of thing that is the danger of the involvement of this non-technical agency, with agencies that do have an expertise and are supposed to look at the overall element of the problem. As the bill is written today, and as the Senator has pointed out so cogently, the agency could consider an element of consumer protection, a particular interest, a particular group, a particular segment of thought, but it is not required to look at the overall interests of the consumer or at the long-term affects of its actions on the consumer.

The danger I see in something like this is in just exactly that kind of occurrence, where the agency simply does not take into consideration the long-term effect. For example, with the catalytic converters that are programed for introduction in 1975 we are increasing the consumption of gasoline to the point where it is going to cost another 3 to 5 or 6 miles per gallon to drive an automobile with these various devices incorporated, and we are pouring out what they think now are nontoxic gases, but we do not know for sure. The state of the art has not reached the point at which we can tell for sure whether they are nontoxic in terms of the potential ecological imbalance that could be created.

I think the danger is that with all the thrust and desire that is inherent in a new agency to prove itself and make its mark, to demonstrate its effectiveness and its need for more funds and more manpower and more power the next time around, this could result in some very unfortunate decisions coming out that could have long-term implications.

Again, this demonstrates the need for an amendment which requires the agency to look at something more than the narrow interests of one consumer, one group of consumers, or one special interest group. It seems to me that the amendment offered by the Senator from Alabama does that. It would effectively create a condition whereby the agency would have to consider all elements of the proposal, long term and short term, special interests, vested interests, con-

sumers; but all these taken collectively are the interests of the American people. They simply cannot be separated, as Congress often does in its legislation. We say that we must take into consideration the overall implications of the action of this agency.

The support the Senator and I have given to the amicus approach is warranted because it does mandate an overview and an overall analysis of the problem which is important to us.

Mr. GURNEY. The Senator mentioned the California experience with pollution laws. It seems to me that we have perhaps a more dramatic example of where the CPA could intervene in the area of pollution.

As the Senator will recall, Congress passed last year a very strong air pollution bill. The air pollution bill requires the automobile industry to eliminate almost entirely the emissions—that is, the pollution emissions—from automobile engines by 1975. There is a wide difference of opinion as to whether the automobile industry is going to meet this requirement. As a matter of fact, my recollection is that sometime this year one of the automobile companies appealed to the Environmental Protection Agency and asked for an extension of time.

Mr. BROCK. That is correct.

Mr. GURNEY. I think, too—I wish the Senator would correct me if he recalls—that the Environmental Protection Agency denied their request.

Mr. BROCK. That is correct.

Mr. GURNEY. Let us say this bill was law when that request was made by the automobile company. Let us say that when the request was made, the United Automobile Workers, representing hundreds of thousands of automobile workers, requested the CPA to intervene in that action on their behalf, saying, "We want you to intervene because we think that if this deadline of 1975 is enforced by the EPA, we are going to be out of jobs." I cannot imagine a more viable consumer interest than that. As I understand, under this bill the CPA would be bound to entertain that complaint. Certainly, that is not a frivolous complaint, because some experts in this country feel that the deadline cannot be reached. And if the deadline cannot be reached and this law is not extended, many people are going to be out of jobs.

Suppose the CPA comes in, in its fierce advocacy manner, in this proceeding; and says, "No, Mr. Administrator of EPA, you cannot enforce this deadline. You have to extend it another year. There are hundreds of thousands of men's jobs depending upon this, and whether they have bread in their homes or whether they have homes, because they must meet their mortgage payments, depends on whether they have jobs. So you have to extend this deadline." As I understand it, the CPA might get in there and argue their position fiercely.

Let us say that the EPA decided against the request of the automobile industry and the request of the CPA. As I understand this bill, the CPA would have every right to appeal that to the Federal district court, and if the Fed-

eral district court went against him he could go to the Circuit Court of Appeals and right on up to the Supreme Court. Is that not the Senator's understanding of what would be happening if this had been law when that request was made?

Mr. BROCK. Yes. That raises two problems. One is the delay inherent in this kind of proceeding to achieve any result, and second—although I would admit that the Senator has chosen a difficult analogy for me, because I happen to believe that something should have been done a long time ago—

Mr. GURNEY. I might say that I agree with the Senator on that.

Mr. BROCK. The industry has been somewhat less than truly responsive in doing an adequate job. It could have done a much better job.

But let us take the illustration the Senator presented and take it one further step. Let us say that the industry comes to the CPA and they say, "If you force us to go to the standards by 1975, we are going to have to put \$100 million into a catalytic converter and the retooling that accompanies that. Granted the fact that we can do that, and it may just barely meet the standards, if you will allow us to spend that \$100 million in the development of the single cylinder engine, or some other type of breakthrough, by 1976 we will have a car that is 99 percent emission free from now on, at a much lower cost to every consumer and with much higher effectiveness; but if you make us put the \$100 million into a catalytic converter we are not going to be able to come up with the development of the Wankel engine until 1980."

That is a qualitative decision. It is subjective, but it is terribly difficult to make. There are strong arguments for going either way. The industry may come in to the CPA and urge the CPA to take a system. But in the long run it may be more important for the environment, as well as the economy, that we go an alternative route. We could have two agencies of government coming into court, because that is where it must be resolved ultimately, one making the determination and the other appealing it.

Every time this has happened, the courts have been confused, but more than that, they have been resentful of the inability of this Government to make a decision and stand by it. There should be one standard for the agencies and the courts. That is the kind of problem we are creating here. It is absolutely ridiculous.

Mr. GURNEY. The Senator's illustration is an excellent one. That is precisely the point I was making with the illustration I started out with. The whole point of the matter—the Senator's illustration as well as my own—it seems to me, buttresses the fact that we are giving the CPA vast power to influence vast social changes, economic changes, and scientific changes that we should better leave with the agencies we have set up specially to do that job.

Mr. BROCK. That is what they are for—

Mr. GURNEY. That is what they are for; yes.

Mr. BROCK. They have all the technical expertise in the world. If they do not have enough, let them come to Congress and we will appropriate more money. We have been very generous in that regard.

Mr. GURNEY. I would think that would be the sensible way to do it, too.

Another thing that troubles me about the bill is the grants portion in here. On page 33 of the bill, title III is entitled "Consumer Protection Grants."

There are established planning and program grants. Several pages are in that section. Also, there is provided for these grants, \$20 million for fiscal year ending June 30, 1974, and that is doubled to \$40 million for the next year.

As I understand this planning and grant business, we are telling the States we have several million dollars for them, if they will go about planning consumer protection within their own States.

Now, does not the Senator feel that with this sort of money, and also with this sort of guideline in the bill about how the consumer should be protected, it is very likely that the States will eventually create a very similar kind of consumer protection agency in every one of the 50 States, modeled along the very same lines as the Consumer Protection Agency in this bill? Is that not a fair assumption to make?

Mr. BROCK. Yes. I think it is. Again, this raises two points. First, if there is any possible power that is—and I do not know whether there is—left out of this bill, what we are saying to the States is, "We will finance you to find it, and use it to whip the consumer, if you deem it necessary to, on the local level."

Finally, I do not know of another example in Federal legislation where we create an agency of Government and allow it to define its own area of jurisdiction so broadly in the interest of the consumer in this case, and then empower it to intervene in a State decision, local decision, State court, or local court. I know of no parallel in government today. Does the Senator?

Mr. GURNEY. No; I do not. I do not at all. It seems to me that if we enact this bill in its present form, we will not really protect the consumer but we will overprotect him, and in that overprotection, we will damage him in his pocketbook very seriously. There is no way, in my mind, that we can set up this sort of system without its costing the producer of goods a great deal more to become involved in all of the various transactions, hearings, and product changes which would result. Eventually of course, who will pay, but the poor old consumer. We will really hurt him far more under this sort of circumstance, than if we went about it in some reasonable way, such as the amicus way, where his viewpoint could be presented and should be presented. Everyone on the committee, including those of us opposed to the bill in this present form, are for adequate representation of the consumer.

This kind of protection would be sensible and reasonable and one that not only the U.S. Government, but also the consumer who is the ultimate person to be considered, could afford.

I would certainly hope that the Senate in time that we will be considering this bill, would look very carefully at its specific provisions, and its pitfalls. I would certainly hope the Senate would consider the approach of the amicus amendment, and, hopefully, when this amendment is offered, will be able to support the distinguished Senator from Alabama (Mr. ALLEN) and others who are in favor of it.

I yield back the floor, Mr. President.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the joint resolution (H.J. Res. 1227) approving the acceptance by the President for the United States of the Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures With Respect to the Limitation of Strategic Offensive Arms.

QUORUM CALL

Mr. RIBICOFF. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BUCKLEY). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER VACATING ORDERS FOR RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that orders recognizing the following Senators on tomorrow be vacated: Mr. NELSON, Mr. MUSKIE, Mr. HART, Mr. BAYH, and Mr. TUNNEY.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR HUGHES AND SENATOR KENNEDY TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the recognition of the two leaders under the standing order, the following Senators be recognized, in the order stated, and each for not to exceed 15 minutes: Mr. HUGHES and Mr. KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD AND SENATOR SCOTT TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the remarks by Mr. KENNEDY tomorrow, the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 5 minutes,

and that he be followed by the Republican leader (Mr. SCOTT) for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR FOREIGN ASSISTANCE ACT TO BE LAID BEFORE THE SENATE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the orders for the recognition of Senators tomorrow, the Chair lay before the Senate the Foreign Assistance Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TIME LIMITATION AGREEMENT ON H.R. 10729, AN ACT TO AMEND THE FEDERAL INSECTICIDE BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as H.R. 10729, an act to amend the Federal insecticide bill, is called up and made the pending question before the Senate, it be under a time agreement in the usual form, as follows: 1 hour on the bill, to be equally divided between Mr. TALMADGE and the Republican leader or his designee, time on any amendment in the first degree to be limited to one-half hour, and time on any amendment in the second degree, debatable motion, or appeal, to be limited to 20 minutes, to be divided and controlled in accordance with the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GAMBRELL. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield to my distinguished friend and colleague from Georgia (Mr. GAMBRELL).

ORDER OF BUSINESS

Mr. GAMBRELL. If I understand correctly, the consumer protection bill remains the unfinished business at the present time, subject to taking up the foreign aid bill in the morning after the preliminary speeches, as the Senator has

outlined them, and after the foreign aid bill is disposed of, in accordance with the previous order, voting at 1:30 p.m. and thereafter, the unfinished business will remain the Consumer Protection Act.

Mr. ROBERT C. BYRD. It will remain that bill as far as tomorrow is concerned, yes.

Mr. GAMBRELL. I would like to ask the distinguished Democratic whip if there are any other measures which have been scheduled for a time certain or a day certain to be the first track or second track items other than the Consumer Protection Act.

Mr. ROBERT C. BYRD. No other measures have been so scheduled as of this hour. I should say, however, that the distinguished majority leader has indicated that it is his intention, certainly when I last talked with him about the program, to have H.R. 1, the welfare bill, come up on Wednesday.

Mr. GAMBRELL. No order has been taken on H.R. 1?

Mr. ROBERT C. BYRD. No order has been entered.

Mr. GAMBRELL. I would like at this time to reassert, for the attention of the leadership and the distinguished Democratic whip, who is representing the leadership on the floor, the concern of a number of us with reference to H.R. 13915, the so-called antibusing legislation, which measure covers a number of equal educational opportunity provisions. The distinguished junior Senator from Alabama (Mr. ALLEN) has on numerous occasions expressed his concern for the scheduling of that measure, and the leadership has indicated a sensitivity to that concern, as has been expressed by a number of other Senators.

The Senator from Alabama (Mr. ALLEN) has addressed a letter to Senator MANSFIELD and other members of the leadership and circulated that letter among the Members of the Senate, reconfirming his deep concern that the scheduling of a number of so-called pieces of "must" legislation may result in a deferral of the very important bill, H.R. 13915, to the point where it could not receive adequate consideration and might not, in fact, have an opportunity to be debated and voted on before adjournment sine die.

I might say, for myself, if the Senator will yield further, that I share in the concern that has been expressed. I have not so stated because other Senators were very ably expressing that concern, but it seems to me that where we have scheduled a bill, such as the Consumer's Protection Agency, on which no agreement seems to be possible at the present time, and where a long debate is possible, and the same kind of debate may occur on H.R. 1, when and if it should be scheduled, that we are simply deferring to an independent later time debate on H.R. 13915.

I might say, for myself, without lessening the importance of the Consumer Protection Act, or even the welfare reform bill, that, in my own consideration, there is no issue that has burned hotter in my State or has burned hotter on the floor of the Senate or this Congress than the busing issue.

The welfare issue is certainly one of tremendous concern, but even it, as the distinguished whip knows, is one where there are at least three corners, and the debate may follow off into any one of several directions, whereas on the busing issue, I think we can settle down to two sides, and it can come, if Senators are reasonable, to an up-and-down vote on H.R. 13915, and we can get the matter disposed of.

So I would urge on the leadership their sincere and dedicated consideration that H.R. 13915 might be scheduled at the earliest possible time, and not be deferred after other matters that might be equally controversial, but possibly not so urgently in need of solution as that particular problem.

I thank the majority whip for indulging me in these comments, and hope he will convey these sentiments to the majority leader and to the minority leader and urge them not to—what was previously described by Senator SCOTT—waffle on this issue. It is of too deep a concern, I think, to waffle at this juncture.

I thank the Senator.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Georgia (Mr. GAMBRELL).

The very distinguished majority leader (Mr. MANSFIELD) is well aware of the sentiments that have been expressed by the distinguished Senator from Georgia and others. The leadership is in possession of the letter written by the distinguished Senator from Alabama (Mr. ALLEN) to which the distinguished Senator from Georgia (Mr. GAMBRELL) has just referred. I am confident that the majority leader, and may I say that I likewise, appreciate the concern and the interest that have been expressed.

I am positive that the discussions within the leadership with respect to the scheduling of this measure and other measures will continue. As earlier indicated, it is the intention at some point to call up the antibusing bill, and I know that the majority leader will certainly do what he says he will do. With that, I think I shall have to close. I am confident there will be some discussion tomorrow about this very subject and others.

I cannot assure the able Senator of any more than that. The leadership will take his expression of concern under advisement, and hopefully some way will be found to negotiate the programming of this measure and the other very important measures which have to be acted upon before Congress adjourns sine die.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9 a.m. After the two leaders have been recognized the following Senators will be recognized in the order stated, and each for the time stated:

Mr. HUGHES, for not to exceed 15 minutes, Mr. KENNEDY for not to exceed 15 minutes, Mr. ROBERT C. BYRD for not to exceed 5 minutes, and Mr. SCOTT for not to exceed 10 minutes.

At the conclusion of the order for the recognition of Senators on tomorrow, the Senate will proceed to the consideration of the foreign aid bill, H.R. 16029. The pending question at that time will be on the amendment by Mr. SCOTT, and debate on that amendment will be followed by debate on the amendment by Mr. STENNIS to delete the amendment by Mr. BROOKE.

At the conclusion of the debate at 1:30 p.m., the votes will occur on the amendment by Mr. SCOTT and the amendment by Mr. STENNIS in that order.

If other amendments are offered at that time, they will be in order, but there will be no time for debate thereon. Immediately after the vote on the Scott amendment and the Stennis amendment—and any other amendment that may then be offered, without debate—a vote will occur on final passage of the bill.

Upon passage of H.R. 16029, the Foreign Assistance Act, the Senate will resume consideration of the unfinished business, S. 3970, a bill to establish a Council of Consumer Advisers, to establish an independent Consumer Protection Agency, and for other purposes. The pending question will be on the adoption of the amendment by the distinguished junior Senator from Alabama (Mr. ALLEN).

Yea-and-nay votes will occur on tomorrow. The first yea-and-nay vote will come at 1:30 p.m. That will be a 15-minute rollcall, and on each succeeding vote thereafter, until the foreign aid bill is disposed of, each rollcall vote will be limited to 10 minutes.

There may be yea-and-nay votes on the consumer bill during the late afternoon, and it may be that the distinguished majority leader or his designee would want to call up other bills—on which time agreements have been reached—in the late, late afternoon of tomorrow, depending on the circumstances and the situation at that time.

RECESS UNTIL 9 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 9 a.m. tomorrow.

The motion was agreed to; and (at 4:41 p.m.) the Senate took a recess until tomorrow, Tuesday, September 26, 1972 at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 25, 1972:

DIPLOMATIC AND FOREIGN SERVICE

Edward W. Mulcahy, of Arizona, a Foreign Service officer of class one, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chad.

Kenneth Franzheim II, of Texas, now serving as Ambassador Extraordinary and Plenipotentiary of the United States of America to New Zealand, to Western Samoa, and to Fiji, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United

States of America to the Kingdom of Tonga.
William R. Crawford, Jr., of Pennsylvania, a Foreign Service officer of class two, to be Ambassador Extraordinary and plenipotentiary of the United States of America to the Yemen Arab Republic.

U.S. COURTS

H. Emory Widener, Jr., of Virginia, to be a U.S. circuit judge, Fourth Circuit vice Albert V. Bryan, retired.

Kevin Thomas Duffy, of New York, to be

U.S. district judge for the southern district of New York, vice Irving Ben Cooper, retired.

Robert J. Ward, of New York, to be a U.S. district judge for the southern district of New York, vice Frederick Van Pelt Bryan, retired.

James C. Turk, of Virginia, to be a U.S. district judge for the western district of Virginia, vice H. Emory Widener, Jr.

DEPARTMENT OF JUSTICE

James N. Gabriel, of Massachusetts, to be U.S. attorney for the district of Massachu-

setts for the term of 4 years, vice Joseph L. Tauro.

CONFIRMATION

Executive nomination confirmed by the Senate September 25, 1972:

U.S. TAX COURT

Darrel D. Wiles, of Missouri, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

EXTENSIONS OF REMARKS

IMF-WORLD BANK MEETS TODAY

HON. RICHARD T. HANNA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 25, 1972

Mr. HANNA. Mr. Speaker, the annual meeting of the International Monetary Fund and World Bank begins today here in Washington, D.C. On September 13, I expressed my thoughts as to the most advantageous course for U.S. policy in this important meeting. I found this morning's Washington Post article on the subject to be most worthwhile reading. I want to call it to the attention of my colleagues:

IMF, WORLD BANK TO DISCUSS RICH-POOR NATION RELATIONS

(By Robert E. Hunter)

Today, the World Bank and the International Monetary Fund begin their annual joint meeting in Washington. The crisis in the international trading and monetary system is, properly, first on the agenda. But second on the agenda is an even more intractable problem: the future efforts of poor countries to develop, and of relations between the "rich" countries—representing a quarter of the world's people—and the rest.

Uppermost in the mind of every official from the developing world this week will be the failure by the rich countries to meet the internationally-agreed target for Official Development Assistance (ODA)—that is, economic aid channeled through individual governments and international institutions. The target is .7 per cent of Gross National Product; the achievement is only .35 per cent, while the United States itself now stands at .32 per cent and falling, as compared to over 1 per cent under the Marshall Plan.

For anyone interested in development, or in relations between rich and poor countries, these figures are familiar—and distressing. But the Bank-Fund meeting will also have to face another set of concerns. As observers in growing numbers are now aware, many poor countries are failing to achieve the more important goals of development despite record achievements in growth of GNP: over 5 per cent for the developing world as a whole during the 1960s. Once the touchstone of economic faith, growth alone is now recognized as inadequate. This is especially so in the face of a phenomenal increase in unemployment in poor countries, fueled by the population explosion, and a steadily worsening distribution of incomes between rich and poor in most developing countries.

To many poor countries, these problems seem insuperable. Yet for others, wisdom and ingenuity are already beginning to pay off. In the United States, we tend to ignore some near-miracles of social and economic development in places like Taiwan, South Korea, and China, because the nature of their governments leaves much to be desired by our standards. In Taiwan, for example, a whole

new set of strategies for development has virtually eliminated unemployment, stopped the drift of workers to urban slums, drastically reduced population growth, increased export earnings to a level second in Asia to Japan, and made possible a relative equality in income distribution that is rivaled by few rich countries, and certainly not by the United States.

Whether experience in these countries will have wide application elsewhere is not yet clear. But there is hope in employment-generating policies that stress the use of labor rather than capital; in population policies that stress the importance of a rise in living standards as an incentive for limiting family size; and in efforts to promote more equal distribution of incomes, not as the enemy of economic growth, but as an essential part of it. Indeed, greater social and economic justice is required if there is to be any real development at all.

Officials who discuss these themes at the Bank-Fund meeting this week will be well-received—by the poor. But there will be continued resistance by the rich to the necessary corollary: that targets for ODA have to be met, and that some way has to be found to help poor countries sell the products they make in world markets. With the flurry of concern about the overall international economic system, coupled with the general trend toward protectionism in the rich countries, these points will probably be lost. But they underpin any real hopes for a constructive political and economic relationship between rich and poor countries. Some experts are even predicting that efforts by rich countries to restructure the monetary and trading system may fall to get the necessary ratification if the world's developing countries continue to be frozen out.

The United States may meet some special criticisms this week. It is true that Congress is now close to appropriating the first third of our \$760 million commitment in replenishments funds for the International Development Association (IDA)—the arm of the World Bank that makes loans on softer terms. But the three years covered by the replenishment started in July 1971, only now are we getting around to taking the steps that will let the whole system come into operation. This time, it is other rich countries that will be raising eyebrows, as they wonder about the value of their commitments to IDA—and other forms of development assistance—if the world's richest country is so reluctant to play its part. Moreover, some of these same countries are still smarting at our decision to abandon general unttying of aid—i.e. freeing bilateral aid loans from the requirement that they be spent in the lending country. We arm-twisted these countries into negotiating on an unttying program in 1970-71, then reneged on our part as a result of the New Economic Policy of August 1971.

No decisions are likely to be taken this week on any of these matters, although a tone will be set. In many ways, this will be unfortunate. In one way, at least, this is also ironic: that on the issues of job creation and income redistribution, the rich, and particularly the United States, have much to learn from some of the developing countries.

U.S. FOREIGN TRADE

HON. RUSSELL B. LONG

OF LOUISIANA

IN THE SENATE OF THE UNITED STATES

Monday, September 25, 1972

Mr. LONG. Mr. President, on Saturday, September 23, I had the privilege of speaking at the launching of the SS *Tillie Lykes* at Quincy, Mass. On that occasion I undertook to state in simple terms what I thought would be necessary if this Nation is to restore a favorable balance in its international payments and regain its position of strength and leadership among the nations of the world.

I ask unanimous consent that my remarks on that occasion be printed in the Extensions of Remarks.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

REMARKS OF SENATOR RUSSELL LONG

Mr. Chairman, distinguished officials of Lykes-Youngstown, and General Dynamics, Ladies and Gentlemen:

It is a special honor for me to be here to congratulate Frank Nemec and Joe Lykes for the vision, the leadership, and the faith in their own good judgment that led to the production of this great ship the *Tillie Lykes*. We of Louisiana are enormously proud of the Lykes family history of leadership in the American Merchant Marine. New Orleans is their home office and we regard them as ours.

As an American I am grateful to you men and women of the Quincy Shipbuilding Division for the months of hard work that it took to build this great national asset.

If we conduct ourselves wisely and do those things we should be doing, then we will see this Nation and its working men and women building a great many more great vessels like this one until America's merchant marine is again number one on the high seas.

As chairman of a Merchant Marine Subcommittee, I assure you that I will be working to bring that about as long as I hold that position.

But there is an even larger task to which you and I must dedicate ourselves. We must bring an end to a trade policy which is destroying the leadership of the United States, dissipating our wealth, bankrupting us among the family of nations, and denying millions of American workers their jobs.

Put in very simple terms this Nation must quit buying from other nations more than we are selling to them for the simple reason that we cannot keep it up, and we cannot afford it.

Anybody who keeps buying more than he is selling over a long period of time will end up broke and deeply in debt. That is exactly what has been happening to Uncle Sam year after year.

Since 1950 we have had a deficit in our